



(6)



*Francois Mary Richardson  
Currier.*



















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Smith (Sir B) DE

# REPVBLICA ANGLORVM.

*The maner of Gouvernement or  
policie of the Realme of Eng-  
land, compiled by the Honora-  
ble man Thomas Smyth, Doctor of the  
civill lawes, Knight, and principall  
Secretarie vnto the two most worthie  
Princes, King Edward the sixt,  
and Queene Elizabeth,*

*Seene and allowed.*

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# To the Reader.



O conceale the graces  
inspired by God, or the  
giftes ingraffed by na-  
ture; or the vertues at-  
chued vnto our selues  
by industrie, in all ages  
and of all wise men was  
accounted vnduetiful-  
nesse, vnkindnesse & impietie vnto that com-  
mon wealth, in the which, and vnto the which  
we are both bred and borne: but to suppress  
the worthie works of any author, may iustly be  
iudged not only iniurie to the person, but even  
enuie at the whole world. VVherefore chaun-  
cing vpon this short discourse compiled by the  
honorable knight sir Thomas Smyth, and con-  
sidering that the same could not but be a great  
light vnto the ignorant, & no lesse delight vnto  
the learned in the lawes and policie of sum-  
drie regiments: I thought it part of my dutie,  
as wel for reuiuing of the fame of so notable a  
man, as for the publike imparting of so pythic  
a treatise, to present the same vnto thy indiffe-  
rent and discrete iudgement: VVhereon al-  
though the errors & rashnes of Scribes, appear-  
ing in the contrarietie & corruption of cop-

## To the Reader.

pies, happening both by the length of time si-  
thens the first making, as also by the often tran-  
scripting might iustly haue been mine excuse or  
rather discourage: yet weyng the authoritie  
of the author togither with the grauitie of the  
matter, I made no doubt but that the reuerence  
due vnto the one, & the recompence deserued  
by the other would easily counteruail all faults  
committed by a clarke & writer. And whereas  
some termes or other matters may seeme to dif-  
fent from the vsual phrase of the cōmon lawes  
of this realme: notwithstanding to him that will  
consider that the profession of the maker was  
principally in the ciuill lawes, and therefore not  
to be expected as one excellent in both, & also  
that the finishing of this worke was in Fraunce  
farre from his librarie, and in an ambassad even  
in the midst of weightrie affaires, it cannot not  
ought not without greateingratitude be disple-  
sant or in any sorte disliking. Wherfore (gentle  
Reader) accept in good part my zeale and this  
honorable mans trauaille: assuring thy selfe that  
the same framed by an expert workemaster,  
and forged of pure and excellenteis thall, will  
not faile in proouing to be a right conuenient  
instrument.

# REPVBBLICA ANGLORVM.

*The maner of gouernement or  
policie of the REALME OF  
ENGLANDE.*

Of the diuersities of common  
wealthes or gouernement.

C H A P. L



Hey that haue written  
heretofore of Common  
wealthes, haue brought  
them into thre most sim-  
ple and speciall kindes or  
fashions of gouernement.  
The first where one alone  
doth gouerne, is called of  
the Greckes *Monarchia*, the sec<sup>e</sup> *Monarchia*.  
cond, where the smaller  
number, commonly called

of them *Aristocracie*, and the thirde where the multitude  
doth rule *Democratia*. To rule, is vnderstode to haue the  
highest and supreme authoritie of commaundement.  
That part or member of the common wealth is saide to  
rule which doth controwle, correct, and direct all other  
members of the common wealth. That part which doth  
rule, define and command according to the forme of the  
gouernement, is taken in euerie common wealth to be  
iust and lawe: As a rule is alway to be vnderstode to  
be straight, and to which all workes be to be confor-

*Aristocratie.*  
*Democratia.*

B 1

med,

med, and by it to be iudged : I doe not mearie the Lesbians rule which is conformed to the stome : but the right rule whereby the Artificer and the Architect doe iudge the straightnesse of euerie mans wo:ke, he to be reckoned to make his wo:ke perfectest, who goeth nearell to the Straightnesse.

## What is iust or Lawe in euerie common wealth or gouernement.

### CHAP. 2.

**N**O: doth appeare, that it is profitable to euerie common wealth (as it is to every thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth bearre the rule, doe commaund that which is profitable to it, and the commandement of that part which doeth rule on that sort, to be h[er] accepted in every common wealth respectiuely to be iust (as we haue said before): it must needes follow, that the definition whiche Tl: Simachus did make, that to be iust which is the profite of the ruling and most strong part (if it be meant of the Cittie or common wealth) is not so farre out of the way, (if it be ciuilly vnderstoode) as Plato would make it. But as there is profitable and likelyhoode of profite, so there is right and like-lyhoode of right. And aswell may the ruling and souveraigne part comandaund that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe good vnto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he therfore by the lawe is iustly to be condemned, because his doing is contrarie to the lawe and the ordinaunce of that part whiche doth comandaunde.

last.

An:

## An other diuision of common wealthes.

C H A P. 3.

But this matter yet taketh an other doubt : for of these maner of rulinges by one, by the fewier part, & by the multitude or greater number, they which hane moze methodically & more distinctly and perfectly witten vpon them, doe make a subdivission : and dividing eche into two, make the one good and iust, and the other euill and vnjust: as, where one ruleth, the one they call a king or ~~soverain~~, the other ~~tyrant~~, a tyrant : where the fewier number, the one they name a gouerning of the best men ~~proportionis~~ or *Remp. optimatum*, the other of the usurping of a few Gentlemen, or a few of the richer & stronger sort ~~incomparabili~~, or *Paucorum potestatum*: and where the multitude doth governe, the one they call a common wealth by the generall name ~~incomparabili~~, or the rule of the people ~~incomparabili~~, the other the rule or the usurping of the popular or rascall and viler sort, because they be moe in number ~~incomparabili~~.

Example of chaunges in the maner  
of gouernment.

C H A P. 4.

In common wealthes which haue had long continuance, the diversities of times haue made all these maners of ruling or gouernement to be seene: As in Rome: kings Romulus, Numa, Seruius: tyranthes, Tarquinius, Sylla, Cesar: the rule of best men, as in time when the first Consuls were: and the usurping of a few, as of the Senators after the death of Tarquinius, and before the succession of the Tribuneate, and manifestly in the Decemvirate, but moze perniciously in the Triumvirate of Cesar, Crassus, and Pompeius: and afterwarde in the Triumvirate of Octanius, Antonius, and Lepidus: The common wealth and rule of the people, as in the expell-

B ii sing

ing of the decemviri and long after, especially after the law was made , either by Horatius, or (as some would have it ) Hortentius, *quod plebs scinerit, id populum teneat.* And the ruling and usurping of the popular and rascall, as a litle before Sylla his reigne, and a litle before Caius Cesars reigne. For the usurping of the rascality can never long endure, but necessarily breedeth, & quickly bringeth forth a tyrant. Of this, hath Athens, Syracuse, Lacedemon and other old auncient ruling Cities had experiance, and a man neede not doubt but that other commo wealthes haue followed the same rate. For the nature of man is never to stand still in one maner of estate, but to grow from the lese to the more, and decay from the more againe to the lese, till it come to the fatale end and destruction , with many turnes and turmoyles of sicknesse & recovering, seldom standing in a perfect health, neither of a mans bodie it selfe, nor of the politique bodie which is compact of the same,

### Of the question what is right and iust in cuerie common wealth.

#### CHAP. 5.

**S**O when the common wealth is euill governed by an euill ruler and iuriest ( as in the three last names which be rather a sickenesse of the politique bodie than perfect & good estates) if the lawes be made, as most like they be alwayes to maintaine that estate : the question remaineth whether the obedience of them be iust , and the disobedience wrong : the profit and conseruation of that estate right and justice, or the dissolution: and whether a good and vpright man , and louer of his countrie ought to maintaine and obey them , or to seeke by all meanes to abolish them, which great & haulte courages haue often attempted : as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyrantes, Brutus and Cassius.

Cassius against Cæsar, which hath bin cause of many commotions in common wealthes, wherof the iudgement of the common people is according to the event and successe: of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certaine it is that it is alwayes a doubtfull and hazardous matter to meddle with the chaunging of the lawes and gouernement, or to disobey the orders of the rule or gouernment, which a man doth finde alreadie established.

That common wealthes or gouernements  
are not most commonly simple but mixt.

## C H A P. 6.

**N**Dw although the gouernements of common wealthes be thus divided into three, and cutting ech into two, so into sixe, yet you must not take that ye shall finde any common wealth or gouernement simple, pure and absolute in his sort and kinde, but as wise men haue diuided for understandinges sake and fantasied iiiii. simple bodies which they call elementes, as fire, ayre, wa-  
ter, earth, and in a mans bodie foure complexions or tempera-  
tures, as cholerick, sanguine, phlegmatique,  
and melancholique: not that ye shall finde the one utterly perfect without mixture of the other, for that nature almost will not suffer, but understanding doth discerne  
ech nature as in his sinceritie: so seldom or never shall  
you finde common wealthes or gouernement which is  
absolutely and sincerely made of any of them aboue named,  
but alwayes mixed with an other, and bath the  
name of that which is moze and ouerruleth the other al-  
wayes or for the most part.

B iii

The

## The definition of a king and of a tyrant.

## CHAP. 7.

**V**Here one person beareth the rule they define that to be the estate of a king, who by succession or election commeth with the good will of the people to that governement, and doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne. A tyraunt they name him, who by force commeth to the Monarchy against the will of the people, breaketh lawes alreadie made at his pleasure, maketh other without the advise and consent of the people, and regardeth not the wealth of his communes but the aduancement of him selfe, his faction, & kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, & the butte or marke wherunto it doth tend and shoothe. So as one may be a tyrant by his entrie and getting of the gouernement, & a king in the administration thereof. As a man may thinke of Octavius, and peraduenture of Sylla. For they both comming by tyranny and violence to that state did seeme to frangile berie much so; the better order of the common wealth, howbeit either of them after a diverse maner. An other may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus: for the empire came to them by succession, but their administration was utterly tyrannicall, of Nero after five yeares, of Domitian and Commodus very shartly vpon their new honour. Some both in the conning to their Empire, and in the butte which they shoot at, be kings, but the maner of their ruling is tyrannicall: as many Emperours after Cæsar and Octavius, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or plebiscitum, whitch Caius Cæsar or Octavius obtained, by whitch all the peo- ple

Res.

Tyrannus.

ple of ROME did conferre their power & authority vnto Cæsar wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in celo & in terra*) whose successor he pretendeth to be: yet the generall Councils make a strife with him, to make the Popes power either *Aristocratian* or at the least *legitimum regnum*, & would faine bryde that *absolutam potestatem*. Some men doe iudge the same of the kinges of Fraunce, and certaine Princes of Italie and other places, because they make & abrogate lawes and edictes, lay on tributs and impositions of their owne will, or by the private Counsell and advise of their friends and fauorites only, without the consent of the people. The people I call that which the word *populus* doth signifie, the whole bodie and the three estates of the common wealth: and they blame Lewes the xi. for bring<sup>Populus.</sup> ing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyranничall power and gouernement. He himselfe was wont to glory and say, he had brought the crowne of Fraunce hors de page, as one would say out of Wardship.

### Of the absolute king.

#### CHAP. 8.

**O**ther do call that kinde of administration which the Greekes do call *τυραννία*, not tyranny, but the absolute power of a king, which they would pretend that euerie king hath, if he would vsle the same. The other they call *βασιλεία* or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie dangerous, aswell to him that doth vsle it, and much more to the people vpon whom

whom it is vsed : whereof the cause is the fraultie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrowled authozitie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who woulde not suffer any man to keepe the Dictatorship aboue sixe monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyzannie for a time. As I remember, Aristotle (who of all writers hath most absolutely & methodically trea-  
 sed of the diuision and natures of common wealthes) maketh this sort of gouernmet to be one kind of kings. But all commeth to one effect: for at the first, all kinges ruled absolutely, as they who were either the heades & most ancient of their families, derived out of their own bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen as reason was: or else in the rude world amongst barbarous & ignorant people, some one then whom God had endewed with singular wisdome to inuent thinges ne-  
 cessary for the nourishing and defence of the multitude, and to administer iustice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authozitie giuen him of the multitude, and of the Gentils when he was dead & almost when he was yet lyuing, was taken for a God, of others for a Prophet. Such among the Jewes were Moses, Iosua, & the other judges, as Samuel, &c. Romulus & Numa among the Romanes, Lycurgus and Solon & diuerse other among the Greekes, Zamol-  
 xis among the Thracians, Mahomet among the Ara-  
 bianes: And this kinde of rule among the Greekes is called *typanis*, which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, wared insolent & proude, vniust, and not regarding the common wealth,  
 committed

Dictatorship.

Tyrannis.

committed such actes as were horrible and odious , as killing me without cause, abusing their wifes & daugh-  
ters , taking and spoylng all mens goods at their plea-  
sure s , and were not shepheardeas as they ought to be,  
but rather robbereas and devourers of the people, wherof  
some were conteners of God, as Dionysius , other while  
they lyued like diuels, and would yet be adored & accom-  
pted for Gods , as Caius Caligula and Domitian : that  
kind of administration and maner also , at the first not  
euill, hath taken the signification & definition of the vice  
of the abusers, so that now both in Greeke, Latine, and  
English a tyrant is counted he, who is an euill king, &  
who hath no regard to the wealth of his people, but see-  
keth onely to magnisse himselfe and his , and to satisfie  
his vicious and cruell appetite, without respect of God,  
of right or of the law: because that for the most part they  
who haue had that absolute power haue beene such.

## Of the name king & thadministration of England.

### CHAP. 9.

**T**HAT which we call in one syllable king, in english the  
olde english men and the Sarons from whom our  
tongue is deriuued to this day calleth in two syllabes cy-  
ning, which whether it commeth of cen or ken which be-  
tokeneth to know & understand, or can, which betokeneth  
to be able or to haue power, I can not tell . The parti-  
ciple absolute of thone we vse yet, as when we say a cu-  
ning man , *Vir prudens aut sciens*: the verbe of thother  
as I can do this, *possum hoc facere*. By olde and auncient  
histories that I haue red , I do not understand that our  
nation hath vled any other generall authoritie in this  
realme neither Aristocraticall, nor Democraticall, but  
onely the royall and kingly maiestie which at the first  
was diuided into many and sundrie kinges, ech abso-

C i lutely

lately reigning in his countrey, not vnder the subiectiō  
of other , till by fighting thone with thother , the ouer-  
commed alwayes falling to the augmentation of the  
vanquierer and ouercommer , at the last the realme of  
England grew into one Monarchie . Neither any one of  
those kinges, neither he who first had all , tooke any in-  
uestiture at the hād of Themperour of Rome or of any  
other superior or forzaine prince , but helde of God to  
himselfe , and by his sword his people and crowne , ac-  
knowledging no prince in earth his superior , and so it  
is kept & holden at this day . Although king John ( by  
the rebellion of the nobilitie ayded with the daulphin of  
Fraunce his power ) to appease the Pope who at that  
time possessing the consciences of his subiectes was the  
also his enemy and his most greeuous torment ( as some  
histories do write ) did resigne the crowne to his legate  
Pandulphus , and tooke it againe from him as from the  
Pope by faith and homage , and a certaine tribute year-  
ly . But that act being neither approued by his people ,  
nor established by act of parliament , was forthwith and  
ever sithens taken for nothing , either to binde the king ,  
his successors or subiectes .

### VVhat is a common wealth, and the partes thereof.

#### C H A P . 10.

**T**he better understood hereafter , it is necessarie yet  
to make a third diuision of the common wealth by  
the partes thereof . A common wealth is called a socie-  
ty or common doing of a multitude of free men collected  
together and united by common accord & couenauntes  
among themselves , for the conservation of themselues  
aswell in peace as in warre . For properly an host of me  
is not called a common wealth but abusively , because  
they are collected but for a time and for a fact : which  
done ,

done, ech diuideth himselfe from others as they were before. And if one man had as some of the olde Romanes had (if it be true that is written) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diuerse villages, yet that were no common wealth : for the bondman hath no communion with his master, the wealth of the Lord is onely sought for, and not the profit of the slave or bondman. For as they who write of these thinges haue defined, a bondman or a slave is as it were (saving life and humane reason) but the instrument of his Lord, as the axe, the law, the chescyll and goylge is of the carpenter. Truth it is the carpenter looketh diligently to saue, correct and amend all these : but it is for his owne profit, and in consideration of him selfe, not for the instrumentes sake. And as these be instruments of the carpenter, so the plow, the cart, the horse, ore or asse, be instrumentes of the husbandman : and though one husbandman had a great number of all those and looked well to them, it made no common wealth nor could not so be called. For the priuate wealth of the husbandman is onely regarded, and there is no mutuall societie or portion, no law or pleading betweene thone and thother. And (as he sayth) what reason hath the pot to say to the potter, why madest thou me thus? or why dost thou breake me after thou hast made me: even so is the bondman or slave which is bought for monie: for he is but a reasonable and lyving instrument the possession of his Lorde and master, reckoned among his goods, not otherwise admitted to the societie ci-  
vill or common wealth, but is part of the possession and goods of his Lord. Wherefore except there be other orders and administrations amonst the Turkes, if the prince of the Turkes (as it is written of him) doe re-pute all other his bondmen and slaves (him selfe and his sonnes onely freemen.) a man may doubt whether his

administration be to be accompted a common wealth or a kingdome, or rather to be reputed onely as one that hath vnder him an infinite number of slaves or bondme amog whom there is no right, law nor common wealth compact, but onely the will of the Lord and seruitor. Surely none of the olde Greekes would call this fashion of gouernment Remp. or ~~republice~~ for the reasons which I have declared before.

### The first sort or beginning of an house or familie called *auxopula*.

#### C H A P . I I .

Then if this be a societie, and consisteth onely of free men, the least part therof must be of two. The naturalest and first coniunction of two toward the making of a further societie of continuance is of the husband & of the wife after a diuerse sorte ech having care of the familie: the man to get, to trauaile abroad, to defende: the wife, to sene that which is gotten, to farrie at home to distribute that which commeth of the husbandes laboz for the nurtriture of the children and family of them both, and to keepe all at home neat and cleane. So nature hath forged ech parte to his office, the man sterne, strong, bould, aduenterous, negligent of his bewtie, & spending. The woman weake, fearefull, satyre, curious of her bewtie, and sauing. Either of them excelling other in wit and wisedome to conduct those thinges which appertaine to their office, and therefore wheres their wisedome doth excell, therein it is reason that ech shoulde gouerne. And without this societie of man, and woman, the kinde of man coulde not long endure. And to this societie men are so naturally borne that the prince of all Philosophers in consideration of natures was not afraide to say that a man by nature is rather desirous to follow hym selfe to another and so to liue in couple,

couple, than to adherd himselfe with many. Although of all thinges or lyuing creatures a man doth shew him selfe most politique, yet can he not well live without the societie & fellowship ciuill. He that can live alone saith Aristotle is either a wild beast in a mans likenes, or else a god rather than a man. So in the house and familie is the first and most naturall (but priuate) appearance of one of the best kindes of a common wealth, that is called Aristocracia where a few & the best doe governe, and where not one alwaies: but sometime and in some thing one, & sometime and in some thing another doth beare the rule. Which to maintaine for his part God bath giuen to the man great wit, bigger strength, and moze courage to compell the woman to obey by reason or force, and to the woman bewtie, faire countenaunce, and sweete wordes to make the man to obey her againe for loue. Thus ech obeyeth and commaundeth other, and they two togeather rule the house. The house I call here the man, the woman, their children, their seruantes bonde and free, their cattell, their housholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine togeather in one, yet this cannot be called Aristocracia, but Metaphorice, for it is but an house, and a litle sparke resembling as it were that gouernement.

Dominus seu  
familia.

### The first and naturall beginning of a kingdoime in Greeke Babylonia.

CHAP. 12.

But for so much as it is the nature of all thinges to encrease or decrease, this house thus entreasing & multiplying by generation, so that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out

**C**ittie in

Prouining or propagation is when a man layeth a brach of a Vine or Osier, or any other tree into the ground, so that it taketh roote of it selfe & may live though it be cut then from the first roote or stock.

*Paganus.*

*Oppidum.*

*Civitas.*

in couples as it were by prouining or propagation. And the childe by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon an other house or familie. So by this propagation or prouining first of one, and then another, and so from one to another in space of time, of many howses was made a streete or village, of many streetes and villages ioyned together a citie or borough. And when many cities, boroughes and villages were by common and mutuall consent for their conservatio ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most natural beginning and source of cities, townes, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was vnnaturall for any of his sonnes or offyng to striue with him for the superioritie, or to go about to governe or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth bear the first and natural example of an absolute and perfect king. For he loued them as his owne children and nephewes, cared for them as members of his owne body, prouided for them as one having by long time more experience than any one or all of them. They againe honoured him as their father of whose bodie they came, obeyed him for his great wisedome and forecast, went to him in doubtfull cases as to an oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe vsed noiture: for ech paine put vpon them, he esteemed as laide vpon himselfe.

The first and naturall beginning of the rule  
of a few of the best men called in Greeke *Apologetes*

CHAP. 13.

But when that great grandfather was dead, the sonnes of him and brethren among themselves not hauing

hauing that reuerence to any , nor confidence of wise-  
dome in any one of them , nor that trusshone to tho-  
ther, betweene whome ( as many times it fareth with  
brethren ) some strikes and brawlinges had before a-  
risen : To defende themselves yet from them which  
were walsh and strangers , necessarily agreed among  
themselves to consult in common , and to beare rule for  
a time in order , now one , now another : so that no one  
might beare alwaies the rule , nor any one be neglected .  
And by this meanes if anie one fayled during his yeare  
or time by ignorance , the next ( being either wiser of  
himselfe , or else by his brothers error & fault ) amended  
it . And in the meane while , at diuerte and most times  
when vrgent necessitie did occurre , they consulted all  
those heads of families together within themselues ,  
how to demeane and order their matters , best for the  
conservuation of themselves , and ech of their families ,  
generally and particularly . Thus a few being heades  
and the chiese of their families , equall in birth and no-  
bilitie , and not much different in riches , gouerned their  
owne houses and the descendentes of them particula-  
rly , and consulted in common vpon publike causes , agree-  
ing also vpon certaine lawes and orders to be kept a-  
mongst them . So the best , chiefe and sagest did rule ,  
and thother part had no cause to stryne with them , nor  
had no cause nor appearance to compare with anie of  
them , neither for age nor discretion , nor for riches or no-  
bilitie . The rulers sought ech to keepe and maintaine  
their posteritte , as their sonnes and nephewes , and  
such as shoulde succeeide them and carie their names  
when they were deade , and so render them being mor-  
tall by nature immortall by their fame and successi-  
on of posteritte : hauing most earnest care to main-  
taine still this their cousinage and common familie as-  
well against forraigne and barbarous nations , which  
were not of their progenie , tongue , or religion , as a-

C iiiii gainst

gainsse wilde and savage beasts. This seemeth the naturall course and beginning or image of that rule of the fewer number, which is called of the Greekes *Apisxaria* and of the Latines optimatum respublica.

The first originall or beginning of the rule  
of the multitude called *oakaria* or *Apisxaria*.

CHAP. 14.

**N**OW as time bringeth an ende of all thinges , these brethren being all dead , and their offspring encreasing daily to a great multitude , and the reurence due to the old fathers in such and so great number of equals sayling by the reason of the death or doting of the Elders : eche owing their merites of education apart to their fathers and grandfathers , and so many arising and such equalitie among them , it was not possible that they should be content to be gouerned by a fewe . For two thinges being such as for the which men in society and league do most strive , that is honour and profitte , no man of free courage can be contented to be neglected therein , so that they were faine of necessitie to come to that , that the more part should beare the price away in election of magistrates and rulers . So that either by course or by lot ech man in turne might be receaved to beare rule and haue his part of the honour , and ( if any were ) of the profit , which came by administration of the common wealth . For whosoever came of that old great grandfathers race , he accompted him selfe as good of birth as any other . For service to the common wealth all or such a number had done it , as they coulde not be accompted fewe . And if a fewe would take vpon them to blisse over the rest , the rest conspiring together would soone be master over them , and ruinate them wholly . Whereupon necessarily it came to passe that the common wealth must turne and alter as before from one to

to a few, so now from a few to many and the most part, ech of these yet willing to saue the politicke bodie, to conserue the authozitie of their nation, to defende themselves against all other, their strife being onely for empire and rule, and who shoulde doe best for the common wealth, wherof they would haue experiance made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Greckes called *Δημοκρατια*: the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

### That the common wealth or policie must be according to the nature of the people.

CHAP. 15.

By this processe and discourse it doth appeare that the mutations & changes of fashions of gouernement in common wealthes be naturall, & do not alwayes come of ambition or malice: And that according to the nature of the people, so the commo wealth is to it fit & proper. And as all these iii. kindes of common wealthes are natural, so when to ech partie or espece and kinde of the people that is applied which best agreeeth like a garmet to the bodie or shoo to the foote, then the bodie politique is in quiet, & findeth easse, pleasure and profit. But if a contrary forme be givenen to a contrary maner of people, as when the shoo is too little or too great for the foote, it doth hurt and encomber the conuenient use thereof, so the free people of nature tyzannized or ruled by one against their willes, were he never so good, either faile of courage and were scrupule, or never rest vntill they either destroie their king and them that would subdue them, or be destroyed themselves: And againe another sort there is which without being ruled by once prince but set at

D i

libertie

libertie cannot tell what they shoule doe, but either through insolencie, pride, and idlenes will fall to robbery and all mischiefe, and to scatter and dissolve themselves, or with foolish ambition and priuate strife consume one another and bring themselves to nothing. Of both these two we haue histories enough to beare witness, as the Greckes, Romanes, Hammites, Danes, Vandals, and others. Yet must you not thinke, that al common wealthes, administrations and rulinges began on this sort, by prouining or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peraduenture of diverse nations & languages, likynge þ place which he hath by force conquered, tarreth there, & beginneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lombardes in Italie, the Frenchmen in Gaule, the Saracens in Spaine and part of Fraunce, the Barons in great Brittaine, which is nowe called Englande: of which when that one and chiefe prince is dead, the nobler sort consult among themselves, and either choose an other head and king, or diuide it into more heads & rulers, so did the Lombards in Italie, and the Barons in England, or take at the first a common rule & popular estate, as the Zvisers did in their cantons & do yet at this day, or else admit the rule of a certayne seuer, excluding the multitude and communaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

### The diuision of the parts and persons of the common wealth.

#### CHAP. 16

**T**O make all thinges yet cleare before, as we shal go, there ariseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth

sisteth of a multitude of houses & familie s which make stretes & villages, & the multitude of the stretes & villages make townes , and the multitude of townes the realme, & that freemen be cōsidered only in this behalf, as subiects & citizes of the cōmon wealth, & not bondmen who can beare no rule nor iurisdiction ouer freemen, as they who be taken but as instruments & the goods and possessions of others . In which consideration also we do reiet women , as those whom nature hath made to keepe home and to nourish their familie and children, and not to medie with masters abroade , nor to beare office in a citie or common wealth no more than chil-  
dren and infantes : except it be in such cases as the au-  
thoritie is annexed to the blood and progenie, as the  
crown, a dutchie, or an erledome, for there the blood is  
respected, not the age nor the sexe. Whereby an absolute  
Quæne, an absolute Dutches or Countesse, those I call  
absolute, which haue the name, not by being maried to  
a king, duke, or erle, but by being the true, right & next  
succelors in the dignitie , and vpon whom by right of  
the blood that title is descended: These I say haue the  
same authoritie although they be women or children in  
that kingdome, dutchie or earledome , as they shoulde  
haue had if they had bin men of full age . For the right  
and honour of the blood, and the quietnes and suertie of  
the realme, is more to be considered, than either the ten-  
der age as yet impotent to rule, or the sexe not accus-  
med (otherwise) to intermeddle with publicke affaires,  
being by common intendment vnderstood, that such per-  
sonages never do lacke the counsell of such graue and  
discreete men as be able to supplie all other defectes.  
This (as I sayde ) is not enough . But the diuision of  
these which be participant of the common wealth is  
one way of them that beare office , the other of them  
that beare none: the first are called magistrates, the se-  
cond priuate men . Another the like was among the

Romanes of Patricij & plebei, thone striving with thor-  
ther a long time, the patricij many yeares excluding the  
plebei from bearing rule, vntill at last all magistrates  
were made common betweene the: yet was there another  
division of the Romanes into senatores, equites, and  
plebs: the Greekes had also ιωνεις & αρχαιρεις. The French  
haue also at this day, les nobles & la populaire, or gen-  
tis homes & villaines: we in England diuide our men  
commonly into fourre sortes, gentlemen, citizens and  
yeomen artificers, and labozers. Of gentlemen the  
first and chiese are the king, the prince, dukes, mar-  
quises, earles, dicountes, barrons, and these are called  
in the nobility, and all these are called Lords and  
noblemen: next to these be knyghtes, esquiers and sim-  
ple gentlemen.

## Of the first part of gentlemen of englande called Nobilitas maior.

### CHAP. 17.

Nobilitas ma-  
ior.

Eldest sonnes  
of dukes are  
not earles by  
birth, but  
Lordes, and  
take their  
place aboue  
earles, and so  
are eldest sons  
in respect of  
barons.

Esquires of  
honour or  
Lordes.

Dukes, marquises, erles, dicountes, and barrons, either be created by the prince or come to that honor by being the eldest sonnes, as highest & next in succession to their parentes. For the eldest of dukes sonnes during his fathers lyfe is called an earle, an earles sonne is called by the name of a dicount, or baron, or else according as the creation is. The creation I cal the first donation and condition of the honour (givien by the prince, for good service done by him and aduauncement that the prince will bestowe vpon him) which with the title of that honour is commonly (but not alwayes) givien to him and to his heires, males only: the rest of the sonnes of the nobilitie by the rigoz of the lawe be but esquiers, yet in common speche, all dukes and marquises sonnes, and the eldest sonne of an earle be called Lordes. The whiche name common-  
ly

ly doth agree to none of lower degree than barrons, excepting such onely, as be thereunto by some speciaill office called. The barrony or degree of Lordes doth answere to the dignitie of the Senators of Rome, and the title of our nobilitie to their patricij: when patricij did betoken *senatores aut senatorum filios*. *Censu senatorium* was in Rome, at diuerse times diuerse, and in Englande no man is created barron, excepte he may dispend of yearly revenue, one thousand poundes or one thousand markes at the leaſt. Uicountes, earles, marquises and dukes more according to the propoſition of the degree and honour, but though by chaunce he or his sonne haue leſſe, he keepeth his degree: but if they decay by exceleſſe, and be not able to maintaine the honour (as *senatores Romani* were *amori senatori*) ſo ſometimes they are not admitted to the upper house in the parliament, although they keepe the name of Lord still.

### Of the ſecond ſort of gentleme which may be called *Nobilitas minor*, & firſt of knightes.

CHAP. 18.

**N**O man is a knight by ſucceſſion, not the king or prince. And the name of prince in england ~~in eſtate~~ betokeneth the kinges eldeſt ſonne or prince of wales: althouſh the king himſelfe, his eldeſt ſonne, and all dukes be called by generall name princes. But as in Fraunce the kinges eldeſt ſonne hath the title of the daulphine, and he or the next heire apparant to the crowne is monſtre, ſo in Englande the kinges eldeſt ſonne is called ~~in eſtate~~ the prince. Knights therefore be not borne but made, either before the battle to en- courage them the moſe to aduenture their liues, or after the conſtit, as aduauncement for their hardinelle and manhood alreadie ſhewed: or out of the warre

D iii

for

for some great seruice done, or some good hope through  
the vertues which do appeare in them. And they are  
made either by the king himselfe, or by his comission  
and royall authoritie, giuen for the same purpose, or by  
his lieutenaunt in the warres, who hath his royall and  
absolute power committed to him for that time. And  
that order seemeth to aunswere in part to that which  
the Romanes called *Eques Romani*, differing in sonie  
pointes, and agreeing in other, as their commō wealth  
and ours do differ and agree: for never in all pointes  
one common wealth doth agree with an other, no nor  
long time any one common wealth with it selfe. For al  
changeth continually to more or lesse, and still to di-  
uerse & diuerse orders, as the diuersity of times do pre-  
sent occasion, and the mutabilitie of mens wittes doth  
inuent and assay new wayes, to reforme and amende  
that wherein they do finde fault. *Eques Romani* were  
chosen *ex censu*, y is according to their substance and ri-  
ches. So be knyghtes in England most commonly, ac-  
cording to the yearely review of their landes being  
able to maintaine that estate: yet all they that had *E-*  
*questrum censum, non legebantur equites.* No more are  
all made knyghtes in Englannde that may dispense a  
knyghtes land or see, but they onely whom the king wil  
so honour. The number of *Eques* was vncertayne, and  
so it is of knyghtes, at the pleasure of the prince. *Eques*  
*Romani* had *equum publicum*: The knyghtes of En-  
gland hauie not so, but finde their owne horse themselves  
in peace time, and most vsually in warres.

*Census equester* was among the Romanes at di-  
uerse times of diuerse valew: but in England whoso-  
ever may dispense of his free landes 40. l. Sterling of  
yearely revenue by an olde law of Englannde either at  
the coronatio[n] of the king, or mariage of his daughter,  
or at the dubbing of the prince, knyght, or some such  
great occasion, may be by the king compelled to take  
that

that order & honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes ar not thought worthy of y honoꝝ and yet haue abilitie, neither be made kniḡt̄es though they woulde, and yet pay the fine. El. l. Sterling, at that time when this order began, maketh now Cxx. l. of currant mony of Englande: as I haue more at large declared in my booke of the diversitie of standardeſ or the valor of monies.

When the Romanes did write *senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contayned *eques* and *plebem*: so when we in England do say the Lordes and the commons, the knights, esquires & other gentlemen, with citizens burgeses & yeomen be accompted to make the commons. In ordaining of lawes the senate of Lordes of England is one house, where the Archbisches and Bisches also be, and the king or Queene for the time being as chife: the knightes and all the rest of the gentleme, citizens and burgeses which be admitted to consult vpon the greatest affaires of the Realme be in an other house by themselues, and that is called the house of the commons, as we shal more clearely describe whē we speake of the parliament. Whereupon this wozde knight is derived, and whether it do betoken no more but that which miles doth in latine, which is a souldier, might be moned as a question. The word souldier now seemeth rather to come of sould and paymet, and moze to betoken a waged or hyzed man to fight than otherwize, yet Cesar in his Commentaries called soldures in the tongue gallois, men who deuoted & swore themselues in a certaine band or oþe one to another and to thecaptaine, which order if the Almaines did follow, it may be that they who were not hyzed but being of the nation, vpon their owne charges and for their aduaunce-

Verè Lantz-  
knecht, lan-  
cearius: a  
speareman

Eques aura-  
tus.  
The making  
of a knight.

Sire quasi Se-  
nior.

uauncement, and by such common oþ band that did follow the warres, were (possibly) ~~þer ierx~~ called knigþtes oþ milites, and nowe among the Almaines some are called lanceknights as souldiers of their band not hyred, although at this day they be for the most part hirelings. ¶ peraduenture it may be that they which were next about the prince as his garde oþ seruauntes picked oþ chosen men out of the rest being called in the Almaine language, knighþen, which is as much to say as seruauntes: these men being sound of good service, the word afterward was taken for an honoþ, and for him who maketh pþfession of armes. Our language is so chaunged that I dare make no iudgement therof. Now we call him knight in english that the french calleth cheualier, and the lataine equitem oþ equestris ordinis.

And when any man is made a knight, he kneeling downe is stroken of the prince, with his sworde naked vpon the backe oþ shoulder, the prince saying: sus oþ sois cheualier au nom de Dieu and (in times past) they added þ. George, and at his arising the prince saith, auauencer. This is the manner of dubbing of knigþtes at this present: and that forme dubbing was the olde forme in this point, and not creation. At the coronacion of a king oþ queene, there be knigþtes of the bath made with long and more curious ceremonies: But howsooner one be dubbed oþ made a knight, his wife is by and by called a Ladie as well as a barons wife: he himselfe is not called Lord, but hath to his name in common appellation added this syllable, Sir, as if he before were named, Thomas, William, Iohn, oþ Richard, afterward he is alwayes called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men gine to knigþtes in England. This may suffice at this time, to declare the order of knighthood, yet there is an other order of knigþtes in England whiche be called the knigþtes of the garter. King Edward

Edward the third, after he had obtained many notable victories, King John of Fraunce, King James of Scotland, being both prisoners in the tower of London at one time, and king Henrie of Castell the bastard expulsed out of his realme, and Don Petro restozed vnto it by the prince of Wales and Duke of Aquitaine called the blacke prince, inuented a societie of honour, and made a chiose out of his owne realme and dominions, and all Chyldendom: and the best and most excellent renowned persons in vertues and honour, he did adorne with that title to be knightes of his order, gaue them a garter decked with golde, pearle and precious stones, with the buckle of gold, to weare daily on the lefft legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stoffe and fashion exquisite & heretickall, to weare at high feastes, as to so high and princely an order was meete: of which order he and his successours Ringes and Queenes of England to be the soueraigne, and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellowes in that order, to the number of xvi. But because this is rather an ornament of the realme than any policie or gouernment therof, I leauue to speake any further of it.

### Of Esquiers.

C H A P. 19.

**E**squier or esquier (which we call commonly squire) is a French word, and betokeneth *Scrigerum* or *Armigerum*, and be all those which beare armes (as we call them) or armories (as they terme them in French) which to beare is a testimonie of the nobilitie or race from whence they do come. These be taken for no distinct order of the common wealth, but do goe with the residue of the gentleman: save that (as I take it)

C

they

they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or else they were at the first costrels of the bearers of the armes of Lordes or knightes, and by that had their name for a dignitie and honour giuen to distinguish them from a common souldier called in latine *Gregarinus miles*.

## Of Gentlemen.

### C H A P . 20.

**G**entlemen be those whom their blood and race doth make noble and knowne, *Eugenice* in Greeke, the Lataines call them all *Nobiles*, as the French Nobles, *Eugenies* or *Nobilitas* in Latine is defined, honour or title giuen, for that the auncestors hath bin notable in riches or vertues, or (in severer wordes) old riches or prowes remaining in one stock. Which if the successours do keepe and follow, they be verè *nobiles* and *Eugenies*: if they doe not yet the same and wealth of their auncestors serue to couer the so long as it can, as a thing once gilded though it be copper within, till the gilt be wozne away. This hath his reason, for the Etymologie of the name serueth the efficacie of the worde. *Gens* in Latine betokeneth the race and surname, so the Romaines had Cornelios, Sergios, Appios, Fabios, AEmilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the memorie of the glorie of their progenitors fame, were gentlemē of that or that race. This matter made a great strife among the Romanes, when those which were *Noni homines* were more allowed, for their vertues new and newly showen, than the olde smell of auncient race newly defaced by the cowardise and enill life of their nephewes and discendanttes could make the other to be. Thus the Cicerones, Catones, and Marij had

had much adoe with those auncients, and therefore said  
Iuuenalis:

Malo pater tibi sit Tersites, dummodo tu sis  
AEacidi similis vulcaniaque arma capessas,  
Quam te Thersiti similem producat Achilles.

But as other common wealthes were faine to doe,  
so must all princes necessarily followe, that is, where  
vertue is to honour it: and although vertue of auncient  
race be easier to be obtained, aswell by the example of  
the progenitors, which encourageth, as also through  
abilitie of education and bringing vp, which enableth,  
and the lastly enraced loue of tenants & neyboors to such  
noblemen and gentlemen, of whom they holde and by  
whom they doe dwell, which pricketh forward to ensue  
in their fathers steps. So if all this doe faile (as it  
were great pittie it shoulde) yet such is the nature of  
all humaine thinges, and so the wrold is subiect to mu-  
tability, that it doth many times faile: but whē it doth,  
the prince and common wealth haue the same power  
that their predecessorz had, and as the husbandman hath  
to plant a new tree where the old fayleth, so hath the  
prince to honour vertue where he doth finde it, to make  
gentlemen, esquires, knights, barons, earles, marqui-  
ses, & dukes, where he seeth vertue able to beare that  
honour or merits, and deserves it, & so it hath alwayes  
bin vsed among vs. But ordinarily the king doth on-  
ly make knights and create barons or higher degrees:  
soz as for gentlemen, they be made good cheape in Eng-  
land. For whosoever studieth the lawes of the realme,  
who studieth in the uniuersities, who professeth live-  
rall sciences, and to be honest, who can liue idly and  
without manuell labour, and will beare the port,  
charge and countenaunce of a gentleman, he shall be  
called master: for that is the title which men giue to  
esquires and othergentlemen, and shall be taken for a  
gentleman: for syre it is with vs as is saide, *Tant erit  
alys*

*alijs quanti tibi feceris :* (and if neede be) a king of He-  
raulds shal also giue him for mony, armes newly made  
and inuented, the title wherof shall pretende to haue  
beene found by the said Herald in perusing and view-  
ing of olde registers, where his auncestors in times  
past had bin recorded to beare the same : Or if he wil do  
it more truely and of better faith, he will write that for  
the merittes of that man, and certaine qualitie which  
he doth see in him, and for sondrie noble actes which he  
hath perfourmed, he by the authoritie which he hath as  
king of Herauldes & armes, gineth to him and his heires  
these and these armes, which being done I thinke he  
may be called a squire, for he beareth ever after those  
armes. Such men are called sometime in scorne gen-  
tlemen of the fift head.

## VVhether the maner of England in making gentlemen so easily is to be allowed.

### C H A P . 21.

A Man may make doubt & question whether this ma-  
ner of making gentlemen is to be allowed or no, &  
for my part I am of that opinion y it is not amisse. For  
first the prince lookeþ nothing by it, as he shoulde doe if  
it were as in fraunce: for the yeomen or husbandmen is  
no more subiect to taile or tare in Englaunde than the  
gentleman: no, in every payment to the king the gen-  
tleman is more charged, which he beareth the gladder  
and dareth not gaineſale for to lame and drapē his ho-  
nour and reputation. In any shew or number or other  
particular charge of the towne where he is, he wakē o-  
pen his purse wider and augment his portion above o-  
thers, or else he doth diminishe his reputation. As for  
their outward shew, a gentleman (if he wil be accom-  
pted) must ge like a gentleman, a peoman like a peo-  
man, and a rascall like a rascall: and if he be called to  
the

the warres, he must and will ( whatsoeuer it cost him) array himselfe and arme him according to the vocation which he pretendeth : he must shew also a moze manly corage & tokens of better education , higher stomacke and bountifuller liberalitie than others, and keepe a booke hym idle seruauntes , who shall doe nothing but waite vpon him . So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and government of the common wealth, it is not those that haue to do with it, which will magnifie them selues , and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knownen, as shall be declared hereafter.

### Of Citizens and Burgesses.

CHAP. 22.

Next to gentlemen, be appointed citizens and burgesses , such as not onely be free and received as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgesses, be to serue the common wealth, in their cities & burroughes, or in corporate townes where they dwell. Generally in the shires they be of none accoupt , save onely in the common assembly of the realme to make lawes, which is called the Parliament. The auncient cities appoint iii. and ech burrough ii. to haue voices in it; and to give their consent or dissent in the name of the citie or burrough, for which they be appointed.

### Of Yeomen.

CHAP. 23.

Those whom we call yeomen next unto the nobilitie, knightes and squires , haue the greatest charge and  
C iii doings

doings in the common wealth, or rather are more tra-  
uailed to serue in it than all the rest : as shall appeare  
hereafter. I call him a yeoman whom our lawes doe  
call *Legalem hominem*, a worde familiar in iurites and  
enquestes, which is a freeman boorne English, and may  
dispend of his owne free lande in yearly revenue to the  
summe of xl. s. Sterling : This maketh ( if the iust va-  
lue were taken now to the proportion of monies) vi. l.  
of our currant mony at this present . This sort of peo-  
ple confesse themselues to be no gentlemen , but gine  
the honour to al which be or take vpon them to be gen-  
tlemen, and yet they haue a certaine preheminence and  
more estimation than laborers and artificers, and com-  
monly liue welthilie, keepe god houses , & do their busi-  
nesse, & trauaile to acquire riches: these be (for the most  
part) seruantes vnto gentlemen, which with grasing, fre-  
quenting of markettes , and keeping seruauntes not i-  
idle as the gentleman doth , but such as get both their  
owne living and parte of their maisters , by these  
meanes doe come to such wealth , that they are able  
and daily doe buy the landes of vrthastie gentlemen,  
and after setting their sonnes to the schole at the Uni-  
versities , to the lawe of the Realme, or otherwise lea-  
ving them sufficient landes whereon they may liue  
without labour , doe make their saide sonnes by thos  
meanes gentlemen. These be not called masters ; for  
that (as I saide) pertaineth to gentlemen onely : But  
to their surnames , men adde goodman : as if the fur-  
name be Luter , Finch , White , Browne , they are  
called , goodman Luter , goodman White , goodman  
Finch , goodman Browne , amongst their neighbours ,  
I meane not in matters of importance or in lawe. But  
in matters of lawe and for distinction , if one were a  
knight they would write him ( for example sake ) sir  
John Finch knight , so if he be an esquier , John Finch  
esquier or gentleman , if he be no gentleman , John  
Finch,

Finch yeoman. Soz amongst the gentlemen they which claime no higher degrē, and yet be to be exempted out of the number of the lowest soz thercof, be written esquiers. So amongst the husbandmen labourers, lowest and rascall soz of the people such as be exempted out of the number of the rascabilitie of the popular bee called and written yeomen, as in the degrē next bns gentlemen. These are they which old Cato calleth *Aratores* and *optimos cives in Republica*: and such as of whom the writers of cōmon wealthes praise to haue manie in it. Aristotle namely reciteth *μητραὶ αἱρετοῦσιν*: these tende their owne busynesse, come not to meddle in publike matters and iudgements but when they are called, and gladde when they are deliuered thereof, are obedient to the gentlemen and rulers, and in warre cati abide trauaile and labour as men vsed to it, yet wishing it done at an ende that they might come home & lieue of their owne. When they are forth they fight for their Lordes of whom they hold their landes, for their wifes and children, for their countrey and nation, for praise and honour, against they come home, and to haue the loue of their Lordes and his children to be continued towardes them and their children, which haue aduentured their lives to and with him and his. These are they which in the old world gat that honour to Englannde, not that either soz witte, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so heard to endure paine, so couragious to aduenture with their Lordes or Captaine going with, or before them, soz else they be not hastis nor neuer wro, as making no p̄fession of knowledge of warre. These were the god archers in times past, and the stable troupe of sōtemen that assaide all Franche, that would rather die all, than once abandon the knight or gentleman their Captaine,

who at those daies commonly was their Lord, and whose tenautes they were, readie ( besdes perpetuall shame) to be in danger of vndoing of them selues, & all theirs if they should shewe any signe of cowardise or abandon the Lord, Knight or Gentleman of whom they helde their living . And this they haue amongst them from their sofathers tolde one to an other. The gentlemen of France and the yeoman of Englannde are renowned, because in battle of horsemen Fraunce was many times too god for vs , as we againe alway for them on fote . And gentlemen for the most part be men at armes and horsemen , and yeomen commonlie on fote: howesoever it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their capaines were either a fote or vpon a little nagge with them, and the Kinges of Englannde in foughten battles remayning alwaies among the footemen , as the French Kinges amongst their horsemen. Each Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I haue declared, but from whence the word is derived it is hard to say: it cannot be thought that yeomen shold be said a young man, for commonly wee doe not call any a yeoman till he be married , and haue chldren , and as it were haue some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe . Possible our yeomen not beeing so bolde as to name themselves gentlemen , when they came home , were content when they had heard by freuentation with lowe dutchmen of some small gentleman ( but yet that would be counted so ) to be called amongest them, yonker man , the calling so in warres by mockage or in spost thone an other, when they come home, yonker man, and so yeoman: which word now signifieth among vs , a man well at ease and having honestie to live , and yet not a gentleman : whatsoeuer

uer that wodde yonker man, yonke man, or yeaman  
doth more or lesse signifie to the dutch men.

## Of the fourth sort of men which doe not rule.

### CHAP. 24.

The fourth sort or classe amongst vs, is of those  
which the olde Romans called *capite censi proletarij*  
or *opera*, day labourers, poore husbandmen, yea mar-  
chantes or retailers which haue no free lande, copi-  
holders, and all artificers, as Taylers, Shomakers,  
Carpenters, Brickemakers, Wicklayers, Masons, &c.  
These haue no voice nor authoritie in our common  
wealth, and no account is made of them but onelte to  
be ruled, not to rule other, and yet they be not altoge-  
ther neglected. For in cities and corporative townes for  
default of yeomen, enquestes and Juries are impaneled  
of such manner of people. And in villages they be com-  
monly made Churchwardens, alecunners, and mande  
times Constables, which office toucheth more the com-  
mon wealth, and at the first was not employed vpon  
such lowe and base persons. Wherefore generally so  
speake of the common wealth, or policie of Englannde,  
it is gouerned, administrred, & manured by thre sorte  
of persons, the Prince, Monarch, and head gouerner,  
which is called the king, or if the crowne fall to a wo-  
man, the Quene absolute, as I haue heretofore saide:  
In whose name and by whose authozitie all things are  
administrred. The gentlemen, which be diuided into  
two partes, the Baronie or estate of Lordes contey-  
ning barons and all that bee aboue the degrée of a ba-  
ron, (as I haue declares before) : and those which be  
no Lordes, as Knightes, Esquires, and simplely gentle-  
men. The thirde and last sorte of persons is named

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the yeomanrie: each of these hath his part and administration in iudgements, corrections of defaultes, in election of offices, in appointing and collection of tributes, and subsidies, or in making lawes, as shall appeare hereafter.

## THE SECOND booke.

### Of the Parliament and the authoritie thereof.

CHAP. I.



He most high and absolute power of the realme of Englande, consulteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie are, is þ soþe and powter of Englande: so in peace & conuictioun where the Prince is to giue life, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knyghtes, esquires, gentlemen and commons for the lower part of the common wealth, the bishoppes for the elergie bee present to aduertise, consult and shew what is god and necessarie for the common wealth, and to consult together, and vpon mature deliberation enuerie bill or lawe being thise reade and disputed vpon in either house, the

The other two partes first each a part, and after the Prince himselfe in presence of both the parties doeth consent vnto and alloweth. That is the Princes and whole realmes deede: whereupon iustlie no man can complaine but must accommodate himselfe to finde it god and obey it.

That which is done by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giueth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legitimateth bastards, establisheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtfull rightes, whereof is no lawe alreadie made, appointeth subsidies, tailes, fares, and impositions, giueth most frē pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolveth them whom the Prince will put to that triall: And to be short, all that euer the people of Rome might do either *Centuriatis comitis* or *tributis*, the same may be done by the parliament of Englande, which representeth Alias Tribunis. senteth & hath the power of the whole realme both the head and the bodie. For euerie Englishman is entended to bee there present, either in person or by procuratiōn and attorneyes, of what preheminence, state, dignitie, or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be euerie mans consent.

### The forme of holding the parliament.

#### CHAP. 2.

The Prince sendeth forth his rescripts or writtes to every duke, marques, baron, and every other Lorde

temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least xvjie dayes): he sendeth also writtes to the Sherifffes of every shyre to admonish the whole shire to choose two knightes of the parliament in the name of the shyre, to heare and reason, and to give their advise and consent in the name of the shyre, and to be present at that day: likewise to every citie and towne which of ancientie hath bin wout to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, present at the day assignd for the election: the voice of any absent can be counted for none. Yeomen I call here (as before) that may dispense at the least xl. s. of yearlye rent of free lande of his swne. These meeting at one day, the two who have the moxe of their voices be chosen knightes of the shire for that parliament: likewise by the pluralitie of the voyses of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do meeete in the higher house, where after prayers made, they that be present are written, and they that be absent upon sicknes or some other reasonable cause (which the prince will allowe) do constittute under their hande and seale some one of those who be present as their proctour or attorney to give advice for them, so that by presence or attorney & prorey they be all there, all the prindes and barrons & all archbishopps and bishops, and (when abbots were) so many abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal thyme as appertaineth to a king, set in the middest of the higher place thereto. Next vnder the prince sitth the Chancellor, who is the boyce and  
orator

oyator of the prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke: on the other side the dukes and barons. In the middest thereof uppon woolsackes sitteth the Judges of the realme, the master of the roules, and the secretaries of estate. But these that sit on the woolsackes have no voice in the house, but only sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell whereof they have the custodie and knowledge: and this is calld the upper house, whose consent and dissent is givyn by ech man severally and by himselfe, first for himselfe, and then severally for so many as he hath letters and priories, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgesses of the parliament (for so they are called that haue voice in parliament, and are chosen as I haue said before, to the number betwixt iii. C. and liii. C.) are called by such as it pleaseþ the prince to appoint, into an other great house or chamber by name, to which they aunswers and declaring for what shyre or towns they aunswere: then they are willed to choose an able & discrete man to be as it were the mouth of them, all to speake for and in the name of them, and to present him so chosen by them to the prince: which done they comming al with him to a barch, which is at the nether end of the upper house, there he first praiseth the prince, then maketh his excuse of vnabilitie, and prayeth the prince that he would command the commons to chosse another. The chancellor in the princes name doth so much declare him able, as he did declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willichthem to go and consult of lawes for the comon wealth. Then the spea-

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ker maketh certaine requests to the prince in the name  
of the commons, first that his maiestie would be content  
that they may vse and enjoy all their liberties and pri-  
uileges that the common house was wont to enjoy.  
Secondly that they might franckely and freely saye  
their mindes in disputing of such matters as may come  
in question , and that without offence to his Maiestie.  
Thirdly that if any should chaunce of that lower house  
to offend or not to do or say as should become him, or if  
any should offend any of them being called to that his  
bighnes court: That they theselues might (according to  
the ancient custome) haue the punishment of them. And  
fourthly, that if there came any doubt, whereupon they  
shal desire to haue thaduise or conference with his Ma-  
iestie or with any of the Lordes, that they might doe it:  
All which he promiseth in the commons names that  
they shall not abuse , but haue such regarde as most  
faithfull , frue and louing subiectes ought to haue to  
their prince.

The Chauncelor answereth in the princes name, as  
apperteyneth. And this is all that is done for one day,  
& sometime two. Besides the Chauncelor, there is one  
in the vpper house who is called Clarke of the Parlia-  
ment, who readeth the bils. For all that commeth in  
consultation either in the vpper house or in the neather  
house, is put in writing first in paper, which being once  
read , he that will, riseth vp and speaketh with it or a-  
gainst it : and so one after another so long as they shall  
thinke good. That done they goe to an other , and so  
an other bill. After it hath bin once or twise read , and  
doth appeare that it is somewhat liked as reasonable,  
with such amendment in wordes and peraduenture  
some sentences as by disputatio seemeth to be amended.  
In the vpper house the Chauncelor asketh if they will  
haue it engrossed , that is to say put into parchment:  
which done, and read the third time, and that effornea

If any be disposed to object disputed agayne amdg them, the Chancellor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath beeне thise read here in this house, are ye content that it be enacted or no? If the not consentes be moe, then the bill is dashed, that is to say the lawe is annihilated and goeth no further. If the contentes be the more, then the Clarke wryteth vnderneath: Soit baillé aux commons. And so when they see time they send such bills as they haue approued by two or three of those which doe sit on the woolsacks to the commons: who asking licence, and comming into the house, with due reuerence, sayth to the speaker: Master speaker my Lordes of the vpper house haue palled among them and thinke good, that there shold be enacted by Parlement such an act, and such an act, and so readeth the titles of that act or acts. They pray you to consider of them, and shew them your advise, which done they goe their way. They being gone and the doore againe shut, the speaker rehearseth to the house what they sayde. And if they be not busie disputing at that time in an other bill, he asketh them streightwaie if they will haue that bill or (if there be mo) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him in a lower seate his Clarke, who readeth such bills as he first propounded in the lower house, or be sent down from the Lordes. For in that point, ech house hath equal authoritie, to propounde what they thinke meete, either for thabrogating of some law made before, or for making of a newe. All bills be thise in thre diuerse dayes read and disputed vpon, before they come to the question. In the disputing is a mervelous good order vsed in the lower house. He that standeth vppon bare.

bareheaded is understood that he will speake to the bill. If moe stande uppe, who that first is iudged to arise, is first harde, though the one do prayse the law, the other diswade it, yet there is no altercation. For euerie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speakeith with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetuall Dration not with altercation, he goeth through till he do make an end. He that once bath spoken in a bill though he be confuted straight, that day may not reple, no though he would change his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with alteration woulde spende all the time. The next day he may, but then also but once.

No railing or nipping wordes must be vsed. For then all the house will cry, it is against the order: and if any speake vniuerently or seditionisly against the Prince or the priuie counsell, I haue seene them not onely interrupted, but it bath beene moued after to the house, and they haue sent them to the tower. So that in such a multitude, and in such diversitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Neuerthelesse with much doulce and gentle termes, they make their reasons as violent and as behement the one against the other as they may ordinarily, except it bee for urgent causes & hasting of time. At the afternoone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or diswade it. But when any bill is read, the speakers office is as brieflye and as plainlye as he may to declare the effect thereof to the house. If the commons doe assent to such bilbes as be sent to them first agreed

agreed vpon from the Lordes thus subscribed, Les com-  
mons our assentus, so if the Lordes doe agree to such  
billles as be first agreed vpon by the Commons, they  
sende them downe to the speaker thus subscribed, Les  
Seigneurs our assentus. If they cannot agree, the two  
houles (for euerie bill from whence soever it doth come  
is thise reade in each of the houses) if it be understande  
that there is any sticking sometimes the Lordes  
to the Commons, somtime the Commons to the Lordes  
doe require that a certaine of each houle may mee-  
ting, and so ech part to be enformed of others mea-  
ning, and this is alwaies graunted. After which mee-  
ting for the most part not alwaies either parte agrees  
to others billes.

In the upper houle they gine their assent & dissent ech  
man seuerallie & by himselfe first for himselfe, and then  
for so manie as he hath prorie. Wher y Chaunceler hath  
demanded of them whether they will goe to the questi-  
on after the bill hath beene thise reade, they saying on-  
ly content or not content, without further reasoning  
or replying: and as the moze number doeth agree, so  
it is agreed on, or dashed.

In the neather house none of them that is elected ei-  
ther Knight or Burges can gine his voice to an other  
nor his consent nor dissent by prorie. The moze parts  
of them that be present onely maketh the consent or  
dissent. After the bill hath beene twise reade, and then  
engrossed and estiones reade and disputed on ymough  
as is thought: the speaker asketh if they will goe to  
the question. And if they agree he holdeth the bill vp in  
his hande and sayeth, as many as will haue this bill  
goe forwarde, which is concerning such a matter, say  
yea. Then they which allowe the bill crie yea, and as  
many as wil not, say no: as the crie of yea or no is big-  
ger, so the bill is allowed or dashed. If it be a doubt  
which crie is the bigger, they diuide the house, the spea-

ker saying , as many as doe alowe the bill goe downe with the bill, and as many as do not sitte still. So they diuide themselves , and being so diuided they are numbered who make the more part , and so the bill doeth spedde . It chanceth sometime that some part of the bil is allowed, some other part hath much contrariety and doubt made of it : and it is thought if it were amended it would goe sozwarde . Then they chuse certaine committees of them who haue spoken with the bil & against it to amende it , and bring it in againe so amended , as they amongst them shall thinke meete : and this is before it is engrossed, yea & some time after. But y agreement of these committees is no preindice to the house. Soz at the last question they will either accept it or dash it as it shall seeme good, notwithstanding y whatsoever the committees haue done.

Thus no bill is an act of Parliament , ordinaunce, or edict of law, vntill both the houses severallie haue agrēd vnto it , after the order aforesaide , no nor then neither. But the last day of that Parliament or session the Prince cometh in person in his Parliament robes, and sitteth in his state: all the upper house sitteth about the Prince in their stetes and order in their robes. The speaker with all the common house commeth to the barre, and there after thankesgiuen first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince , soz that hee hath so great care of the god gouernement of his people, and soz calling them together to advise of such thinges as shoulde be soz the reformation , establishing & ornament of the common wealth: the Chaunceller in y Princes name giueth thankes to the Lordes & cōmons for their paines and trauailes taken, which he saith the Prince will remember and recompence when time and occasion shall serue, and y he for his part is ready to declare his pleasure concerning their proceedings , whereby the same

may

may haue perfect life & accomplishment by his prince, lie authoritie, and so haue the wholle consent of the Realme. Then one readeas the title of enerie act which hath passed at that session, but only in this fasshion: An act cōcerning such a thing &c. It is marked there what the Prince doth allowe, and to such he sayth: Le roy ou la royne le veult. And those be taken nowe as perfect lawes and ordinances of the Realme of Englannde and none other, and as shouzlie as may be put in print, except it be some priuate cause ou lawe made for the benefit ou preindice of some priuate man, which the Romans were wont to call *priuilegia*. These be onelie exemplified vnder the seale of the Parliament, and for the most part not printed. To those which the Prince li-keth not, he answereth, Le roy ou la royne saduisera, & those be accounted utterly dashed and of no effect.

This is the order and forme of the highest and most authenticall court of Englannde, by vertue whereof all those things be established whereof I speake before, and no other meanes accounted vailable to make any new forfeiture of life, member, ou landes of any English man, where there was no lawe ordayned for it before. Nowe let vs speake of the saide partes when they be severall.

## Of the Monarch King or Queene of Englannde.

### CHAP. 3.

The Prince whom I nowe call (as I haue often be-  
fore) the Monarch of Englannde, King or Queen,  
hath absolutelie in his power the authoritie of warre  
and peace, to desse what Prince it shall please him, and  
to bid him warre, and againe to reconcile himselfe and  
enter into league ou truce with him at his pleasure ou  
G ii the

the aduice onely of his priuie counsell. His priuie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knights, and Esquires, such and so many as he shal thinke god, who doth consult daily, or when neede is of the weighttie matters of the Realme, to give therin to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them, as he shall thinke god, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeþ so many ambassades and letters sent vnto him secret as he will, although these haue a particular oþ of a counsellor touching faith and secrets admistred vnto them when they be first admitted into that companie. So that þerein the kingdome of Englande is farre more absolute than either the dukedom of Venice is, or the kingdomie of the Lacedemonians was. In warre time, & in the field the Prince hath also absolute power, so that his woorde is a lawe, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath beeþ sometime vsed within the Realme before any open warre in sodden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessitie, especiallie, when by anie meanes the punishment might haue beeþ done by oþer of lawe. This absolute power is called marciall lawe and euer was and necessarilie must be vsed in all campes and hostes of men, where the tyme noþ place do suffer the variance of pleading and processe, be it never so short, and the important necessitie requireth spedie execution, that with more awe the souldier might be kept in more straignt obedience, without which never captains can doe anie thing baileable in the warres.

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The p<sup>r</sup>ince useth also absolute power in cryng and decreeing the mony of the realme by his proclamation onely. The mony is alwayes stamped with the pincēs image and title. The forme, fashion, maner, weight, finenesse, and basenesse thereof, is at the discretion of the p<sup>r</sup>ince. For whom shold the people trust more in that matter than their p<sup>r</sup>ince, seeing the coine is only to certifie the goodnes of the mettall and the weight, which is affirmed by the p<sup>r</sup>inces image and marke? But if the p<sup>r</sup>ince will deceaue them and giue them copper or siluer or golde, or enhauince his coyne more than it is worth, he is deceaued himselfe, as well as he doth go about to deceaue his subiectes. For in the same sorte they pay the p<sup>r</sup>ince his rentes and customes. And in time they will make him pay rateably or moze for meate, drinke and vitudalles for him and his, and for their labour: which expe[n]diture doth teach vs nowe in our dayes to be done in all regions. For there euer hath bene, & euer wil be a certaine proportio betweene the scarcity and plentie of other thinges, with gold and siluer, as I haue declared more at large in my booke of monie. For all other measures and weightes, as well of drie thinges as of wet, they haue accustomed to be established or altered by the Parliament, and not by the p<sup>r</sup>inces proclamation only.

The p<sup>r</sup>ince useth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of lawes, where the Payne of the lawe is applyed onely to the p<sup>r</sup>ince. But where the forfaite (as in popular actions it chaunceth many times) is part to the p<sup>r</sup>ince, the other part to the declarator, detecto<sup>r</sup> or informer, there the p<sup>r</sup>ince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the p<sup>r</sup>inces suite) the p<sup>r</sup>ince giueth absolution or pardon: yet with a clause, *modis et recte*

*rectius in curia*, that is to say, that no man obiect against the offendour. Whereby notwithstanding that he hath the princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offendour.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the lenthes and first fruites of all Ecclesiasticall promotions, except in the Universities and certaine Colledges which be exempt.

All writtes, executions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subiectes are the kinges onely, that is to say no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the murtheration of man, be called pleas of the crowne, nor can be done in the name of any inferiour person than he or shae that holdeth the crowne of Englande. And likewise no man can give pardon thereof but the prince onely: Although in times past there were certaine countis Palatinis, as Chester, Durham, Clie, which were halfe iusticers, and writtes went in their name, and also some Lorde marchers of Wales, which claymed like privilege. All these are now worne away. The supreme justice is done in the kinges name, and by his authoritie onely.

The Prince hath the wardshippe and first mariage of all those that hold landes of him in chiese. And also the gouernement of all fooles naturall, or such as be made by aduenture of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconuenience hath beeene thought to grow thereof, & sith that time it hath beeene thought

verie unreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of Hercules hand. And being gouerned iustly & rightly, I see not so much inconuenience in it, as some men would make of it: diuerse other rights and preeminentes the prince hath which be called prerogatiues royalles, or the prerogative of the king, which be declared particulaerly in the booke of the common lawes of England.

To be shor the prince is the life, the head, and the authozitie of all thinges that be done in the realme of England. And to no prince is done more hono<sup>r</sup> and reverence than to the King and Queene of Englannde; no man speaketh to the prince nor serveth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare tarry there but bareheaded. This is vnderstood of the subiectes of the realme: For all strangers be suffered there and in all places to vse the maner of their countrie, such is the civilitie of our nation.

### The chiefe pointes wherein one common wealth doth differ from an other.

#### CHAP. 4.

**N**Ow that we haue spoken of the parliament (which is the whole vniuersall and generall consent and authozitie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and bodie of the realme of England) and also of the prince, (which is the head, life and gouernor of this common wealth): there remaineth to shewe, how this head doth distribute his authozitie and power to the rest of the members for the gouernment of his realme, and the common wealth of the politique bodie of England. And where-

as all common wealthes and governmentes be most occupied, and be most diuerse in the fashion of fine thinges : in making of lawes and ordinances, for their owne government : in making of battell & peace, or truce with forraigne nations : in prouiding of mony for the maintenance of themselves within themselves, & defensice of themselves against their enemies : in choosing and election of the chiefe officers and magistrates : and fiftly in the administration of justice. The first and thirde we haue shewed is done by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared.

### Of the three maners and formes of trialles or iudgementes in England.

#### C H A P. 5.

By order and usage of Englannde there is three wayes and maners, whereby absolute and definite iudgement is given, by parliament which is the highest and most absolute, by battle, and by the great assise.

### Triall or iudgement by parliament.

#### C H A P. 6.

The matter of givynge iudgement by parliament betweene private and private man, or betweene the prince and any private man, be it in matters criminall or ciuill, for land or for heritage, doth not differ much thorther, which I haue prescribed, but it proceeedeth by bill thysse read in ech house and assented to as I haue saide before, and at the last day confirmed and allowed by the prince. Howbeit such bills be sceldome receaved, because that great counsell being enough occupied with the publicke affaires of the realme, will not gladly intermeddle with private quarels & questions.

Triall

## Triall of judgement by battle.

CHAP. 7.

This is at this present not much vsed, partly because of long time the Pope and the cleargie to whom in times past we were much subiect, alwayes cryed against it as a thing damnable and vnlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habites, yea and kindes of trialls and iudgements, and to all other thinges that is therein vsed, tyme and space of yeares bringeth a chaunge. But I could not yet learne that it was euer abrogated. So that it remaineth in force, whensoeuer it be demanded. The maner of it is described in Briton.

## The triall by assise or xij. men, & first of the three partes which be necessary in iudgement.

CHAP. 8.

The two first iudgements be absolute supreme and withoutappeale, and so is also the iudgement by the great assise. And because our manner of iudgements in England is in many thinges different from the fashion vsed either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will be necessarie here to make a litle digression, to the intent, that that whiche shalbe said hereafter may be better vnderstood. All pursutes and actions (we call them in our English tongue pleas) and in barbarous (but now vsuall) latine *placita*, taking that name *abusivē* of the definitiue sentence, which may well be called *placitum* or *dictum*. The French vseth the same calling in their language, the sentence of their judges areste or arrest; in which wordes notwithstanding after their custome they do not saynde the s. but we call *placitum* the action

H

not

not the sentence, and placitare barbarousie, or to pleade in english, agere or litigare. Now in all iudgements necessarily being two parties, the first we call the impleader, suiter, demander or demandaunt and plaintiffe: In criminall causes if he professe to be an accuser, we call him appellant or appellour, and so accusation we call appeale. The other we call the defendant and in criminall causes prisoner, for he cannot aunswere in causes criminall before he do render himselfe or be rendered prisoner.

*Index* is of vs called Judge, but our fashion is so diuerse that they which give the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges but the xii. men. And the same order aswell is in ciuiti matters and pecuniarie, as in matters criminall.

### Of pleas or actions.

#### C H A P . 9.

PLEAS or actions criminall be in English called pleas of the crowne, which be all those which tends to take away a mans life or any member of him, for his euill deseruing against the prince and common wealth.

And this name is giuen not without a cause. For taking this for a principle that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subiectes is spoyled either of life or member, the prince is endamaged thereby, and hath good cause to aske accompt, how his subiectes should come to that mischiefe. And againe for so much as the prince who gouerneth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well gouerned, the life, members and possessions of his subiectes kept in peace and assuraunce: he that by violence shall attempt to breake that

that peace and assuraunce, hath forfeited against the scepter and crowne of England: and therfore not without a cause in all inquisitions and inditementes, if any be found by the ri. men to haue offended in that behalfe, freight the prince is saide to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the prince. Neverthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for him, al the reasons, meanes and defenses that he can, and shall be peaceable hearde and quietlie: But in those pleas & pursuites of the crowne, procurer or aduocate he gettes none, which in ciuill and pecuniarie matters ( be it for land, rent, right, or possession, although he plead against the prince himselfe ) is never denied.

Sauing in appeals and vpon a speciaall plea.

Pleas ciuill be either personall or reall, personall as contractes or for iniuries: reall be either possessorie to aske, or to keepe the possession, or in rem, which we cal a writte of right. For that which in the ciuill lawe is called *actio* or *formula*, we call writ in English: so the Greekes called it *word* for *word* *νόμος*, and in our barbarous latine we name it *breue*.

*Actio* is the parties whole suite. *Breue* is the kings precept.

And as the olde Romanes had their actions some *ex iure ciuili*, and some *ex iure prætorio*, and ordinary *prætor dabant actiones & formulas actionum*: so in Englannde we retaine still this, and haue some writtes out of the chancerie, other out of the common place or the kinges bench.

### Of the chiefe Tribunals,benches or courtes of England.

#### CHAP. 10.

In times past (as may appeare to him that shall with judgement rease the histories and antiquities of England) the courtes and benches followed the king

and his court wheresoever he went, especially shortly after the conquest. Which thing being found very cumbersome, painful and chargeable to the people, it was agtēd by parliament, that there shoulde be a standing place where iudgement shoulde be given. And it hath long time beeē used in Westminister hall, which king William Rufus builded for the hall of his owne house. In that hal be ordinarilie scene 3. Tribunals or Judges seates. At the entrie on the right hande, the common place, where ciuill matters are to be pleaded, specially such as touch landes or contractes. At the upper ende of the hall, on the right hand, the kinges bench, where pleas of the crowne haue their place. And on the left hand sitteth the Chaunceloz accompanied with the master of the Roules, who in latine may be called *custos archivorum regis*, and certaine men learned in the ciuill lawe called Masters of the chancerie, in latine they may be named *Assessores*.

### Of the times of pleading called termes, & of the Chauncelor and chauncerie.

#### CHAP. II.

**T**WO things may be moued in question here, how all Englande (being so long and so large, and haing so many shires and prouinces therein) can be answered of iustice in one place, and in 3. benches be they never so great? An other (whereas the kinges bench is exercised in criminall causes and in all pleas of the crowne, and the common place in all ciuill causes, reall and personall) what place then hath the chancerie?

The first question will seeme more marnelous and haue more occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the year. But where all other cities and common wealthes

wealthes had all the yeare pleas, suites, and iudgements, except for certaine holy daies and haruest and vintage, or when for some vrgent cause the lawe was commaunded to be stopped, which is called *Iustitium*; Contrarie in ours, it is but selve times open. That is onely fourre times in the yeare which they call fermes. After Michaelmas about ten daies, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of threeweekes. Then from xviij dayes after Easter by the space of threeweekes & odde dayes. Likewise from the sixt or seventh day after Trinitie sunday, during two weekes and odde daies. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place may seeme verie iniurious to the people, who must be faine to suffer much wrong for lacke of Justice and of place and time to pleade: but unto that hereafter I entende to answere more fully, and in the meane while that shall suffice which the wise Cato answered to one who moued that the pleading place in Rome might be couered over with canvas as their theaters were, to the intent that the plaintifys and defendantis that were there might plead their matters more at ease, and not be in so much danger of their health by the heate of the sunne striking full and open upon their heades, which was no smal greate and disease, specially at Rome. Nay (saith Cato) for my part I had rather wish that all the waies to the place of pleading were cast ouer with galthrops that the feete of such as loue so well pleading, should feele so much paine of those prickes in going thither as their heades doe of the sunne in tarryng there: he ment that they were but idle, whot heades, busle bodies, and troublesome men in the common wealth that did so nourish pleading: god labourers and quiet men could bee content to ends their matters at home by iudgement of  
H*uij* their

their neighbours and kinfolke without spending so their money vpon procurers and aduocates whom we call attornies, counsellers, Sergeants, and generallie men of lawe. Whose be accounted profitable citizens, who attende their honest labour and businesse at home, and not stande waiting and gaping vpon their rolles and processe in the lawe: as for the other by his iudgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answere: That our lawe which is called of vs the common lawe as ye would say *Ius civile*, is and standeth vpon *ius ciuilis*, that is *Ius summum*: and their marimes be taken so straitlie that they may not depart from the tenour of the wordes even as the olde ciuill lawe was. And therefore as that lacked the helpe of a Praetor ( which might moderari illud *iuris summum* , give actions where none was , mitigate the exactnesse and rigour of the lawe written, give exceptions , as *metus, dolis mali, minoris et acris, &c.* for remedies , and maintaine alwaies *equum & bonum* : ) the same order and rancke holdeth vnr chauncerie , and the chauncelloz hath the verie authoritie herein as had the Praeter in the olde ciuill law before the time of the Emperours . So he that putteth vp his bill in the chauncerie, after that he hath declared the mischiefe wherein he is , hath release as in the solemnne *forum* . And for so much as in this case bee is without remedie in the common lawe, therefore he requireth the chauncelloz according to equitie and reason to prouide for him and to take such order as to god conscience shall appertaine. And the court of the chauncerie is called of the common people the court of conscience, because that the chauncelloz is not strained by rigour or forme of wordes of lawe to iudge but *ex aequo and bono*, and according to conscientia as I haue saide. And in this court the vsuall and proper forme of pleading of Englannde is not vsed, but the forme of pleading

ding by writing, which is used in other countries according to the ciuill lawe: and the tryall is not by xis. men, but by the examination of witnesse as in other courtes of the civil lawe.

## Of Judges in the common lawe of England, and the manner of tryall and pleading there.

### C H A P . 12.

The Prince out of the numbers of those who have  
beene Counsellors or Sargeants at the law, which  
be those who in latin are called *candidi* or *advocati*, cho-  
seth two of the most approued for learning, age, discre-  
tion, and exercise, of whom the one is called chiefe Ju-  
stice of the Kings bench, or simply chiefe Justice, the o-  
ther chiefe Justice of the common place, and others to  
the number of sixe or more, which haue each an ordina-  
rie fee or stipend of the Prince.

These doe sit at such daies as be terme, which may  
be called *Dies legitimi iuridici* or *fasti*, in their distinct  
places as I haue said before. There they heare the plea-  
ding of all matters which doe come before them: and in  
ciuill matters where the pleading is for money or land  
or possession, part by writing, and part by declaration  
and altercation of the aduocates the one with thother,  
it doth so procede before them till it doe come to the  
issue, whiche the latines doe call *statum causa*, I doe not  
meane *contestationem litis*, but as the Rhetoritians do  
call *statum*, we doe most properly call it the issue, for  
there is the place where the debate and strife remaineth  
(as a water held in a close and darke vessel issueth out,  
is boied and emptied) and no where else: that stroke  
well striken is the departing of all the quarrelles. Is-  
sues or *statu* in our lawe bee ordinarily two, facti  
and *iuris*.

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Of

## Of the two manner of issues.

CHAP. 13.

But sometimes  
it is determin-  
ed by the  
same court  
only.

This shoulde  
be ment of a  
respondees  
ouster, when  
the opinion is  
against him  
that taketh an  
exception  
which is not  
peremptorie.

He may denie  
it by protesta-  
tion.

If the question be of the lawe, that is if both the par-  
ties doe agree vpon the fact, and each doe claime that  
by lawe he ought to haue it, and will still in that sort  
maintaine their right, then it is called a demurrer in  
lawe: where if in the lawe the case seeme to the Judges  
that sitte doubtfull, it is called a checkerchamber case,  
and all the Judges will meeet together, and what they  
shall pronounce to be the lawe, that is helpe for right,  
and the other partie loseth his action or lande for euer.  
If the Sergeantes or counsellors doe stande vpon anie  
point in the law which is not so doubtfull, the Judges  
who be taken for most expert biddes him go forwarde:  
and if he hath no other to say but standeth vpon that  
point of the lawe, that bidding goe forwarde is taken  
that he loseth his action, and the defendant is licensed  
to depart without a day: and this is where the issue or  
question is of the lawe or *Iuris*. So is that case where  
the lawe is not doubtfull according to the matter con-  
tayned in the declaration, answeare, replication, rejoinder  
or triplication, the Judge out of hande decideth it.  
And it is the manner that each partie must agree to the  
other stil in þ fact which he cannot denie. For if he once  
come to denie any deede as not done, not his writing,  
that the man by whome the aduersarie claimeth was  
not the aduersaries ancestor, or the evidence which  
his aduersarie bringeth is not true, or that his gift  
was former, or any such like exception which is vaile-  
able to abate the action or barre the partie: and the o-  
ther loyneth in the affirmative and will auerre and  
proue the same, this is called the issue, and immediat-  
ly all question of the lawe ceaseth as agréed by both the  
parties

parties, that there is no question in the lawe. Then as that issue fact is founde by the xij men of whom wee shall speake heareafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill lawe where first the fact is examined by witnessses, indices, tormentes and such like probations to finde out the truth thereof, and that done the aduocats doe dispute of the law to make of it what they can: saying, *ex facto iuris oritur*: heere the Sergeantes or counsellers before the Judges doe in passing forewarde with their pleading determine and agree vpon the lawe, and for the most part and in manner all actions as well criminall as ciuill, come to the issue & state of some fact which is denied of the one partie, and auerted of the other: which fact being tried by the xij men as they find, so the action is wonne or lost. And if a man haue many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the xij men be commonly rude and ignorant, the partie shalbe compelled to choose one exception wherupon to finde his issue, which chosen if he faile in that by the verdit of xij men, he loseth his action and cause, and the rest can serue him for nothing.

Hauing seene both in France and other places many denises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorster: I haue not perceived nor reade as yet so wise, so iust, and so well devised a meane found out as this by any man among vs in Europe.

Trueth it is that where this fashion hath not bene vsed and to them to whom it is newe, it will not be so easily vnderstood, and therfore they may peraduenture be of contrarie iudgement: but the more they doe weigh and consider it, the more reasonable they shal finde it.

Howe the issue, question or *status iuriis* is decided, I

haue tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the dæde or fact. And first I must speake moze largely of the manner of proceeding in the processe, and of such persons as be necessary for the execution thereof.

### Of the sherife of the shire, and of the court of exchequer.

#### CHAP. 14.

The Romans had to execute the commaundementes of the magistrates *Lictores, viatores, accensos*. The ci-  
vill lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily done by the Sherifes. The Sherife (which is as much to say as the *Reue or Bayly of the shire*) is properly word for word *Quæstor prouincie*: it is he which gathereth vppe and accompleth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis, or ararium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first cal-  
led *statarium*, because that there was the stable place to account for the reuenues of the crowne, aswell that which came of the patrimony which we cal the deme-  
nes: as that which commeth of other incident acquisi-  
tions be they rentes, customes, tenthes, quinziesmes,  
tares, subsidies, wheresoever the Prince or his court  
be according to the time and occasion) was a place sta-  
ble, continual and appointed for to recken and account.  
The hearers of the account (who in latin may be called *tribuni ararij*) haue auditors vnder them which the La-  
tines doe call *Rationales*: but they are the chiese for the accounts of the Prince, and may be called *Iuridiciratio-  
nales*, in English we cal them Barons of the exchequer,  
whereof

whereof is one who is called the chiese Baron, as *Tribunus iuridicus rationalis primus* or *princeps*. The chiese of all is called high treasurer of Englande, as you would say in latin *Supremus ararij anglici quastor*, or *Tribunus ararius maximus*. In this court be heard *Quadruplatores* ( which we call promoters ) which be those that in popular and penall action be *delatores*, having thereby part of the profit by the lawe assigned. In this court if anie question be , it is determined after the or- der of the common lawe of Englande by the rij men as I haue saide : and all customers which were in latin called *publicarij in grecce* do account in this office. The Sherise of the shire is calted in our common latin *vicecomes*, as one would say *vicarius comitis* or *procomes*, doing that service to attende vpon the execusion of the communadementes of the Tribunales or Judges which the Earle or countie shoule doe, which Earle or Countey for the most part was attending vpon the Prince in the warres or otherwise about the Prince as the wodde beareth, *comes principis*; whereby it may appeare that the chiese office of the Countie or Earle was to see the kinges Justice to haue course and to bee well executed in the shire or Countie, and the Princes revenues well answered and brought in *ararium principis*, which is called of vs the treasure.

If any fines or amerciaments, which in latin be cal- led *multa*, be levied in any of the saide courtes vpon a ny man or any arrenges of accountes by the latins called *reliqua*, of such thinges as is of customes, taxes, subsidies or any other such occasions, the same y sherise of the shire doth gather and is respondent therfore in the exchequer. As for other ordinarie rentes of patri- moniall landes and most commonly for the taxes, cu- stomes, and subsidies, there be particular receivers and collectorz which doe answere it into the exchequer. The sherise hath vnder him an vnder sherise at his

I if charge

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charge and appointment learned somewhat in the law, especially if he be not learned himselfe, & diuers bailes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shire, and their abilitie to goe vpon enquestes, either to distreine or to summon him to appeare whom the sherife shal appoint, and soz this cause to the sherises as to the minister most proper of the lawe the writtes be directed.

When any thing commeth to an issue of the deede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the confronterie is, or where the man dwelleth of whom the money is demanded, whiche writ is called *venire facias*. Then after the same effect an alias, pluries or distringas according to the nature of the action to the returne of the sherife. And if soz any disobedience of not coming and appearing there be a fine ( which the latins doe call *Multa* ) set vpon any iurores head, the sherise is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer. The sherise also is readie by himselfe or by his vndersherise to serue aswell the Justices of peace in their quarter sessions as þ Justices called *Itinerantes*, in their great assizes, when they come into the shire, which is twise in the yeare, to dispatch and voide actions criminall and civil depending at the common law, and whiche be come nowe to the issue. He hath also the charge of all the prisoners committed to þ prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be shoz, he is as it were the generall minister and highest for execution of such commandementes according to the lawe as the Judges do ordaine, and this is ynaugh for the sherise.

Of

## Of the xij men.

CHAP. 15.

**O**f what manner and order of men in the common welth the xii men be I haue alreadie declared. The sherife alwaies warneth xiiij to appeare, least peradventure any might be sicke or haue a iust cause of absence: and if there be not enowe to make an enquest, the absentes be amerced. For although they be called xii men as a man woulde say *dodecim viri*, yet if they be xvj, xv or the whole number of xiiij, that is no matter, xii they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawefull kynge of tryall by xii men. In actions ciuill which is either of contractes or for lande or possession when so many of those which be warned appeare at the tall as be able to make an enquest, which as I saide be, soze be no lesse then xii, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, fide, or seruant to his aduerse partie, he is his enemie &c. And two of the whole number doe trie and allowe or disallowe the rest. If after exceptions there be so many rejected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled ex circumstantibz: when the quest is ful, they be sworne to declare the truth of that issue according to the evidence and their conscience. Then the Sargeantes of either side declare the issue, and each for his client sayth as much as he can. Evidences of wittinges be shewed, witnesses be sworne, & hearde before them, not after the fashion of the ciuill law but openly, that not only the xii, but the Judges, the parties and as many as be present may heare what ech witnesse doeth say:

That is not  
order but a-  
buse.

Courteisie and  
not dutie.

say: The aduerte partie or his aduocates which we call counsellers and sergents interrogateth sometime the witnessses, and driueth them out of countenance. Although this may seeme strange to our ciuilians now, yet who readeth Cicero and Quintillian well shall see that there was no other order and maner of examining witnessses or depositing among the Romans in their time. When it is thought that it is enough pleadeth before them, and the witnessses haue saide what they can, one of the Judges with a brieke and pithie recapitulacion recifeth to the xii in summe the argumentes of the sergente of either side, that which the witnessses haue declared, and the chiese pointes of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing, deliuering to them the evidence which is shewed on either part, if any be, (evidence here is called writings of contractes autentical after the manner of England, that is to say, written, sealed, and deliuered) and bideth them goe together. Then there is a bayliffe chargid with them to kepe them in a chamber not farre off without bread, drinke, light, or fire vntill they be agreed, that is, till they all agree vpon one verdit concerning the same issue, and vpon one among them who shall speake for them all when they be agreed: for it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they giue their determination: fewe I call vj or viij or viii wordes at the most (for commonly the issue is brought so narrow, that such number of words may be ynochough to affirme or to denie it) which done they are dismissed to goe whither they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come some xx some xxx or xl miles or more, to the place where

where they gine their verdite all, the rest is of their swone charge. And necessarilie all the whole rijs must be of the shire and iiii of them of the hundred where the lande lyeth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called hundreds,  
lathes, rapes, wapentakes.

C H A P. 16.

A hundred, or lath, rape, or wapentake be called of the diuisions or partes of shires in diuers countries diuersly named after the manner and language of each countrey. For the shires be diuided some into x. rijs. xiij. xvij. xx. or xxx hundreds, more or lesse, either that they were at the first C. townes & villages in ech hundred: and although now they be but xvij. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be noyle, or a fewe more or lesse, and they did finde the king to his warres an hundred able men. Lath, and rape I take to be names of seruice, for that so many townes in old time, and in the first pouertie of the Realme did mette together in one day to carrie the Lordes corne into his barne, which is called in olde English a Lath. By that they mette at commaundement of the Lord to reape his corne.

Wapentake I suppose came of the Danes or peradventure of the Saxon. For that so manie townes came by their orders then, to one place, where was taken a monster of their armour and weapons, in which place from them that could not finde sufficient pledges for their god abearing, their weapons were taken away: weapon or wapen in olde English doe signifie all armes offensive, as sworde, dagger, speare, launce, bill, bowes,

bowes, arrowes.

If the place where the monstres were taken or where the saide seruices were done, the hundreds, Lathes, Rapes, and Wapentakes had and haue yet their names, which be most commonly god townes, and it is to be thought at the first they were all such. But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth, such mutation time bringeth with it of all thinges. A hundred hath one or two high Constables, who hath some authoritie ouer all the lower, and particular Constables. Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his baylise, who is made by the Lord if any hath that libertie, or else by the Sherife of the shire for the time being.

### Of the court Baron.

#### CHAP. 17.

**I**T may appeare strange that of xxvj shires, whereof each shire is diuided into divers hundreds, each hundred containing divers parishes, all pleading shoulde be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke þ there shoulde be much lacke of Justice & right, and much wrong taken without redresse. But it is not so: The people being accustomed to live in such an equalitie of Justice, & that in such sort that þ rich hath no moze aduantage therein than the poore, the proces, and procedinges to the iudgement being so short, and iudgements also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other courtes.

courtes. In euerie shire from thre wekes to thre  
wekes the sherife for small thinges not passing xl. s.  
and in certaine hundredds and liberties the baylie like-  
wise from thre wekes to thre wekes holdeth plea.  
And whosoever is possessioner and owner of a mannor,  
may holde from thre wekes to thre wekes, or at his  
pleasure of his tennantes and amongst his tennantes  
a court called a court Baron. And there his tennantes  
being sworne make a Jurie which is not called the en-  
quest, but the homage. These principallie doe enquire  
of the copie holders, and other free holders that be dead  
sith the last court, and bring in their heires, and next  
successours, and likewise of incrochment or intrusion  
of anie of the tennantes against the Lorde, or among  
themselves. They make orders and lawes amongst  
themselves, the paine of them if they be after broken,  
commeth to the Lorde. And if anie small matter be in  
controuerse, it is put to them, and commonly they doe  
ende it. But these courtes doe serue rather for men  
that can be content to be ordered by their neighbours,  
and which loue their quiet and profit in their husban-  
drie, more than to be busie in the lawe. For whether  
partie soone will, may procure a writte out of the  
higher court to remoue the plea to Westminster.

In cities and other great townes there be diverse li-  
berties to holde plea for a bigger summe, which doe de-  
termine aswell as the common lawe, and after the  
same manner, and yet for them that will, it may be  
remoued to Westminster hall.

King Henrie the eight ordained first a president,  
Counsellors and Judges, one for the marches of  
Wales, at Ludlowe, or else where; an other for the  
north parts of Englannde at Porke, where be manie  
causes determined. These two are as be Parliaments  
in Fraunce. But yet if there be anie matter of great  
consequence, the partie may moue it at the first, or re-

move it afterwardes to Westminster hall , and to the  
ordinarie Judges of the Realme , or to the Chauncel-  
ler, as the matter is.

These two courtes doe heare matters before them,  
part after the commou lawe of Englande, and part af-  
ter the fashion of the chauncerie.

## Of the Leete or lawe day.

C H A P . 18.

**L**eete or lawe day is not incident to euerie mannor ,  
but to those onely which by speciall graunt , or long  
prescription haue such libertie. This was as it may  
appeare first a speciall trust and confidecie and com-  
mission given to a fewe put in trust by the Prince , as  
is nowe to the Justices of peace , to sixe men sworne to  
the Prince , to take pledges and suerties in that maner  
of one for an other to answere for obedience and truth,  
to enquire of priuie conspiracies, fraies, murders, and  
bloudsheddes , and to this was added the oversight of  
bread and ale, and other measures. Many times they  
that be out of the homage and court Baron of that  
mannor and Lordship , be neverthelesse astreined and  
answerable to come to the Leete. This Leete is ordi-  
narily kept but twice in the yeare , and that at termes  
and times prescribed.

The Leete or Lawe day is all one , and betokeneth  
woorde for woerde, *legitimum or iuridicum diem*. Lawe  
the olde Sarons called lant or lag , and so by corrupti-  
on and changing of language from Lant to Leete,  
understanding day . They which keepe our full english  
terme, call it yet lawe day.

Of

Of the proceedinges of causes cri-  
minall, and first of the Justices  
of the Peace.

## CHAP. 19.

BEfore the maner of proceeding in causes criminall can be well vnderstod, it wil be necessarie to speake of thre persons, the Justices of peace, the Coroners, and the Constables. The Justices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Marquises, Barons, Knightes, Esquiers, and Gentlemen, and of such as be learned in the lawes, such and in such number as the Prince shall thinke meete, and in whome for wisedome and discretion he putteth his trust, inhabitantes within the countie: saving that some of the high nobilitie and chiese magistrates for honours sake are put in all, or in the most of the commissions of all the shires of England. These haue no time of their rule limited but by commission from the Prince alterable at pleasure.

At the first they were but iiiij, after vij, nowe they come commonly to xxx or xl in euerie shire, either by increase of riches, learning, or activitie in policie and governement. So many more beeing founde, which haue either will, or power, or both, are not so manie to handle the affaires of the common wealth in this behalfe. Of these in the same commission be certainte named, which be called of the *Quorum*, in whome is especiall trust reposed, that where the commission is given to xl or xxx, and so at the last it commeth to iiiij or thre, it is necessarie for the performance of many affaires to haue likewise diversitie of the *Quorums*. The wordes of the commission be such, *Quorum vos A B. C.D. E F. vnum esse voluntam.*

The Justices of the peace be those in whom at this  
time

is.

time for the repressing of robbers, thēues, and vagabunds, of priuie complots, and conspiracie, of riotes, and violences, and all other misdemeanors in the common wealth, the Prince putteth his special trust. Each of them hath authoritie vpon complaint to him made of any theft, robberie, manslaughter, murder, violence, completes, riotes, vnlawefull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom he supposeth offendours, to the prison, and to charge the Constable or Sherise to bring them thither, the gaoler to receave them and kepe them till he and his fellowes doe mette. A fewe lines signed with his bande is ynough for that purpose: these doe mette fourre times in the yere, that is, in each quarter once, to enquire of all the misdemeanors aforesaide: at which daies the Sherise, or his vndersherise with his baylifes be there to attende vpon him, who must prepare against that time sower enquestes of xxiiij yeomen a pece of diverse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These sive enquestes are sworne before them to enquire of all heretiques, traitors, theftes, murders, manslaughters, rapes, false moniers, extortioners, riotes, routes, sorrible entries, vnlawefull games, and all such thinges as be contrarie to the peace and good order of the Realme, & to bring in their verdit. If they among themselves upon their owne knowledge doe finde any culpable, they cause one of the clerkes to make the bill. And if any be there to complain vpon any man for these faults, he putteth in his bil, which bil is presented first to the Justices sitting vpon the bench, to see if it be conceived in forme of lawe, which done the complainant doth deliver it to one of these enquestes, & after the complainant is sworne, he declareth to the what he can, for yprofe of it. And if they finde it true they do nothing but

This is not alwaies and in all places obserued, but only concerning the graund enquest.

writte

write on the backeside of it *bella vera*, as ye woulde say,  
*scriptum verum*: or *accusatio infra*, or *renu est qui accusatur*: Then he who is there named is called indicted.

If they do not finde it true, they write on the back-side *ignoramus*, & so deliver it to the Justices of whome it is sent into pieces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more strettly vnto. For this inditement is no conviction: and if he be indicted, and be not alreadie in prison, the sherife if he can finde him, bringeth him into prison: if he cannot finde him, proces is made out against him, to render himselfe prisoner, or else he shalbe outlawed. So he is called three times in divers The vse of ca- countie daies to render himselfe to the lawe. The pias and exi- fourth is called the erigent, by which he is outlawed gene vpon in- not rendring himselfe, as ye would say: *exactus s; ac- ditementes is sui in exilium*. The outlawe loseth all his goods to the King for his disobedience. But if after he wil render himselfe to answere to the laws, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These meetinges of the Justices of peace four times in the yeare, be called quarter sessions or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the xiij men within themselves, and their owne consciences, or by denunciation of him that putteth in his bill to the xiij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace doe mette also at other times by commandement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of armes and able men, and sometime to take orders for the excessive wages of seruants and labourers, for excelle of appell, for unlawfull games, for con-

They are put  
to fines.

B. iij  
uenti-

uentiles and evill orders in alehouses, and tavernes, for punishment of idle and vagabond persons, and generally as I haue saide, for the god gouernement of the shire, the Prince putteth his confidence in them. And commonly every yeare, or each seconde yeare in the beginning of summer or afterwardes, (for in the warme time the people for the most part be more unrulie) euен in the calme time of peace, the Prince with his counsell choseth out certaine articles out of penall lawes alreadie made for to represse the pride and evill rule of the popular, and sendeth them downe to the Justices, willing the to looke vpon those pointes, and after they haue mette together and consulted among themselves, howe to order that matter most wisely and circumspectly, whereby the people might be kept in god order and obedience after the lawe, they diuide themselves by thre or four: and so each in his quarter taketh order for the execution of the saide articles. And then within certaine space they meeete againe and certifie the Prince or his prynie counsell how they do finde the shire in rule & order touching those pointes and all other disorders. There was never in any commonwealth diuisid a more wise, a more dute and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bosome of god order, & sooner looked vnto that they shold not offend, than punished when they haue offended. For seeing the chiese amongst them, their rulers to haue this speciall charge and doe call vpon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders & lawes, they take a feare within themselves, they amende and doe promise more amendment. So that it is as a newe forbushing of the god lawes of the realme, and a continuall repressing of disorders, which doe naturally rest among men. But as the invention of this, and the

the vse and execution thereof is the most benefitte that can be devised for the common wealth of Englande: So when it shalbe misused, dissembled with, or be condemned, & be done *pro forma tantum*, and as they ferme it in Fraunce par mainere d'acquit onely, it will be the present ruine ( though not at the first apperceived) of the common wealth. Of which the fault may be as well in the commaunders for not making godd choice what and howe they commaunde, as in the comman- ded, for not executing that which is commannded.

Of hue and crie and recognisaunce  
taking vpon them that may  
giue euidence.

C H A P . 20.

By the olde lawe of Englande if any theft, or robbe-  
rie be done, if he that is robbed, or he that seeth or  
perceineth that any man is robbed doe leue hue & crie,  
that is to say, doe call and crie for aide, and say that a  
theft or robberie is done contrarie to the Princes  
peace and assurance: The Constable of the village so  
whom he doth come, and so make that crie, ought to  
raise the parish to aide him and seeke the thēſe, and if  
the thēſe be not founde in that parish, to go to the next  
and raise that Constable, and so still by the Constables  
and them of the parish one after an other. This hue  
and cris from parish to parish is caried, till the thēſe  
or robber be founde. That parish which doeth not his  
dutie, but letteth by their negligence the thēſe to de-  
part, doth not onely paie a fine to the king, but must  
repaire to the partie robbed his damages. So that e-  
uerie English man is a sergeant to take the thēſe, and  
who sheweth himselfe negligent therein, doth not only  
incurre euill opinion thereforze, but hardly shall escape

B. iiiij.      punishe-

punishment : what is done with the thiefe or robber when he is taken, I shall shewe you hereafter. The same manner is followed if anie man bee slaine , for streight the murtherer is pursued of anerie man till he be taken. So soone as any is brought to the Justices of peace by this hue or crie, by the Constable or anie other who doth pursue the malefactor, he doeth examine the malefactor, and wryteth the examination and his confession: then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can give evidence against the malefactor to be at the next sessions of gaole deliueneris to give their evidence for the Queene. He bindeth them in recognisance of x l. xx l. xxx l. xl l. or C. l. according to his discretion, and the qualitie of the crime : which certified vnder his bande, is levied vpon the recognizance if they faile of being there.

## Of the Coroner.

### CHAP. 21.

**B**ut if anie man, woman, or child, be violently slaine, the murtherer not knownen, no man ought or dars burie the bodie before the Coroner hath seene it . The Coroner is one chosen by the Prince of the meane sort of gentlemen, and for the most part a man seene in the lawes of the Realme to execute that office. And if the person slaine, (slaine I cal here, whosoever he be, man, woman, or child, that violently commeth to his death, whether it be by knife, poyslon, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other ) if ( I say ) the person slaine be buried before the Coroner doe come ( which for the most part men dare not doe ) he doeth cause the bodie to be taken vp againe, and to be searched, and upon

Vppon the sight of the bodie so violently come to his death, he doth empanell an enquest of ris men or mo, of those which come next by, be they strangers or inhabitants, which vpon their othes, and by the sight or viewe of the bodie, and by such informations as they can take, must search howe the person slaine came to his death, and by whome as the doer or causer thereof. These are not inclosed into a streit place, (as I tolde before of other enquestes) but are suffered to goe at large, and take a day, sometime after xx or xxx daies, moore or lesse, as the fact is more evident, or more kept close, to give their evidence, at which day they must appeare there againe before the saide Coroner to giue their verdict. So sometime the person slaine himselfe, sometime the brother, the husbande, the wife, the suster, sonne or acquaintance or stranger, such as God wil dñe revealed, be taken. For whosoeuer they doe finde as guiltie of the murder, he is straight committed to prison, and this is against him in the nature of an imditement, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the viewe of the bodie, and the giuing of the verdict, is commonly in the streeete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of euerie subject by violence is accounted to touch the crowne of the Prince, and to be a detriment unto it, the Prince accounting that his strength, power, and crowne doth stande and consist in the force of his people, and the maintenaunce of them in securite and peace.

## Of the Constables.

CHAP. 22.

These men are called in the elder booke of our lawes  
of the Realme *custodes pacis*, and were at the first  
in greater reputation than they be nowe. It may ap-  
peare that there was a credit giue unto them not alto-  
gether unlike to that which is now given to the Justi-  
ces of peace. To this day if any affraie chaunce to be  
made, the Constables ought and will charge them that  
be at debate to keepe the Princes peace: and whosoever  
refuseth to obey the Constable therein, all the people  
will set streight upon him, and by force make him to  
render himself to be ordered. Likewise if any be sus-  
pected of theft, or receiving, or of murther, or of man-  
slaughter, the Constable may take such persons, yea  
enter into any mans house with sufficient power to  
search for such men till he finde them: and if hee see  
cause keepe the suspected persons in the stocks, or cu-  
stodie, til he bring them before a Justice of the peace to  
be examined. But so so much as euerie little village  
hath commonly two Constables, and many times ar-  
tificers, labourers and men of small abilitie be chosen  
unto that office, who haue no great experiance, nor  
knowledge, nor authoritie, the Constables at this  
present ( although this they may do vpon their owne  
authoritie ) yet they seeme rather to be as it were the  
executors of the commaundement of the Justices of  
peace. For the Justice of peace as soone as he understandeth  
by complaint that any man hath stolen, robbed,  
slaine, or any servant or labourer without licence hath  
departed out of his masters service, or any that lieth  
idle and suspectly, knowing once in what parish he is,  
he wrieth to the Constable of the parish, commanding  
him

One or two  
Constables,  
hetherboroughes  
or tithingmen.

him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doth finde cause, bee committeth him to the same Constable to conney him further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole delinerie, and that the lawe hath either condemned or acquited hym. These Constables are called in some places headborowes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and sworne at the Létes of the Lordes, chosen thereto by the homage, and they keeps that office sometime iiij. iiiij or vij years, more or lesse, as the parish doth agree. What headborow doth betoken it is easilly knownen, our language doth declare him as the head or cheife of the borowe or village: likewise tithing man is the cheife of y tithing. Constable semmeth to me to come of our old English worde kinnynge, which is Kinnynghstable, as ye would say a man establisched by the king, for such thinges as appertaineth to pleas of the crowne & conseruation of the Kings peace, & as I saide at the first were in some more reputation, approaching to that authoritie which the Justices of peace nowe doth holde.

### Of the sessions of gaole deliuerie, and the definitiue proceedings in causes criminall.

C H A P . 23.

H Dwe theives and murtherers and other malefactors against the crowne and the peace are taken & brought into holde to answere to justice, partly by hue and

and criue partly by information , and partly by the dili-  
gence of the Justices of peace and the Constables , and  
howe that at the quarter sessions they be indited , or  
else by the Coroners yee haue hearde before . Endite-  
ment ( as yee may perceiue by that which is also gone  
before ) is but a somer iudgement of ris men which be  
called enquirers , and no definitiue sentence ; but that  
which in latin is called *praeiudicium* , it doth but shewe  
what opinion the countrey hath of the malefactor : and  
therefore commonly men be endited absent , not called  
to it , nor knowing of it . For though a man be endited ,  
yet if when he come to the araignement , there be no  
man to pursue further , nor no evidence of witnesse or  
other triall and *indictes* against him , he is without dif-  
ficultie acquitted . No man that is once indicted can be  
deliuered without araignement . For as ris haue given  
a *praeiudice* against him , so ris againe must acquite or  
condemne him . But if the prisoner be not indicted , but  
sent to prison vpon some suspition or suspitious beha-  
viour , and none doe pursue him to the enditement , first  
being proclaimed thus , A . B . prisoner standeth here at  
the barre , if any man can say any thing against him ,  
let him now speake , for the prisoner standeth at his de-  
liveraunce : if no man doe then come , bee is deliuered  
Without any further proces or trouble , agreeing first  
with the gaoler for his fees . And these be called acquitted  
by proclamation . Twise euerie yeare the one is com-  
monly in lent what time there is vacation from plea-  
ding in Westminister hall , the other is in the vacation  
in summer . The Prince doth sende downe into euerie  
shire of Englannde certaine of his Judges of Westmin-  
ster hall , and some Sergeantes at the lawe with com-  
mission to heare and determine ioyntly with the Justi-  
ces of the peace all matters criminall and all prisoners  
which be in the gadles . These Judges doe yow front  
Shire to Shire till they haue done their circuit of so ma-

nie shires as be appointed to them for that yeare: at the ende of the terme going before their circuit it is written and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Justices of the peace of that shire, the Sheriff of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer. The Sheriff hath readie for criminall causes (as I writ before at the sessions of inquirie) *iv.* *v.* or *vi.* enquestes readie warned to appeare that day to serue the Prince, and so manie more as he is commaunded to haue readie to go in ciuill mattors betwixt private men, which they call *Nisi prius*, because that worde is in the writ.

In the towne house, or in some open or common place, there is a tribunall or place of iudgement made aloft vpon the highest bencch, there sitteth the two Judges which be sent downe in Commission in the midst; Next them on eche side, sitteth the Justices of peace, according to their estate and degréé. On a lower bencch before them, the rest of the Justices of the peace, and some other gentlemen or their clarkes. Before these Judges and Justices, there is a table set beneath, at which sitteth the *Custos rotulorum*, or keeper of writtes, Threcheror, the undershirife, and such clarkes as doe write. At the end of that table, there is a barre made with a space for the questes and *xii.* men to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. Then the exer crieth, and commaundeth silence. One of the Judges briefly telleth the cause of their coming, & giveth a good lesson to the people. Then the prisoners are called for by name, and bidden to aunswere to their names. And when the *Custos rotulorum* hath brought forth their enditementes, the Judges doname one or  
 L iiij two.

two or threé of the prisoners that are endited, whom they will haue arraigned. There the clarke speaketh first to one of the prisoners : A. B. come to the barre, hold vp thy hand. The clarke goeth on : A. B. thou by the name of A. B. of such a towne, in such a countie, art endited, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a valor, and carried him away feloniously, & contrarie to the peace of our loueraigne Ladie the Queene. What sayest thou to it, art thou guyltie or not guyltie ? If he will not aunswere, or not aunswere directly guyltie or not guyltie, after he hath bee once or twice so interrogated, he is iudged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be : he is layd vpon a table, and an other vpon him, and so much weight of stones or lead laide vpon that table, while as his bodie be crushed, & his life by that violence taken from him. This death some strong & stout hearted man doth chose, for being not condemned of felonie, his bloud is not corrupted, his lands nor gods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be so rejudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no riȝt men goeth vp on him, there resteth but the Judges sentence, of the paine of death.

If he pleade not guyltie, as commonly all theves, robbers, & murtherers doe, though they haue confessed the fact before the Justice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti criminis*, howsoever it be, if he pleade there not guyltie, the Clarke asketh him howe he will be tryed, and telleth hym he muste sate, by God and the Countrie, for these be the words formall

of

of this triall after Inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrie, then the Clarke replyeth, Thou hast beene endicted of such a crime, &c. Thou hast pleaded not guiltie: being asked how thou wilt be tryed, thou hast aunswere by God and by the Countrie. Loe these honest men that be come here, be in the place and stead of the Countrie: and if thou hast any thing to say to any of them, looke vpon them well and nowe speake, for thou standest vpon thy life & death. Then calleth he in the first Juroz, B. C. come to the booke, and so giueth him an othe to goe vprightlie betwixt the Prince and the prisoner, &c. If the prisoner obiecteth nothing against him, he calleth an other, and so an other, till there be xiij. or aboue: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are unknowen to him, nor they know not him, as I said being substantial yeomen, that dwell about the place, or at the least in the hundred, or neare wherre the felonie is supposed to be committed, men acquainted with daily labour and traauile, and not with such tolle persons, as be readie to doe such mischieves.

When the enquest is full, and the prisoner hath obiecteth nothing against them, as in dede seldom he doeth, for the cause aboue rehearsed: The clarke saith to the cryer, countes, (in French as ye would say recken) and so nameth all those that be on the quest. The cryer at euerie name cryeth aloude, one, then ij. iiiij. viij. and so till the number be full of xiij. or more, & then saith god men and true: and then sayth aloude: If any can giue evidence, or can saie any thing against the prisoner, let him come nowe, for he standeth vpon his deliverance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Justices of peace. He if he be there delivereth vp the  
L. iiiij. exami-

examination which he tooke of him, and underneath the names of those whom he hath bound to give evidence, although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his haunde and confirmation, the xiij. men will acquite the prisoner, but they which shoulde give evidence pay their recognizance. Howbeit this doth seldome chaunce, except it be in small matters, and where the Justices of peace, who sent the prisoner to the gaole, is away. If they which be bound to give evidence come in, first is read the examination, whiche the Justice of peace doeth give in: then is heard (if he be there) the man robbed what he can say, being first sworne to say trueth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing being sworn one after an other to say trueth. These be set in such a place as they may see y Judges and the Justices, the enquest and the prisoner, & heare them, and be heard of them all. The Judge first after they be sworn, asketh first the partie robbed, if he knowe the prisoner, and biddeth him looke upon him: he saith yea, the prisoner sometime saith nay. The partie pursuiaunt giueth god ensignes *verbi gratia*, I knowe thee well ynoch, thou robbest me in such a place, thou beatest mee, thou tookest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy comparsie: the shaae will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can give any indices or tokens which we call in our language evidence against the malefactor. When the Judge hath heard them say inoch, he asketh if they can say any more: if they say no, then he turneth his speche to the enquest. Good men (saith he) ye of the enquest, ye haue heard what these men say against the prisoner,

prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your duetie, & doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ij. or iii. prisoners: For if they should be charged with moze, the inquest will say, my Lord, we pray you charge vs with no moze, it is y<sup>e</sup>ough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing given them, but the enditement, the clarke repeating to them the effect of it, and shewing moze, that if they finde him guiltie, they shall enquire what goods, lands, and tenements, the saide person had at the time of the felonie committed: and if they finde any, they shal b<sup>r</sup>ing it in: if no, they shal say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a baillife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meats, ne fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or wouold heare againe some of them that give evidence to interrogate them moze at full, or if any that can give evidence come late: it is permitted that any that is sworne to say the trueth, may be interrogated of them to enforne their consciences. This is to be understood although it will seeme strange to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Judges, the Justices, the enquest, the prisoner, and so manie as will or can come so neare as to heare it, and all depositions and witnessesse given aloude, that all men may heare from the mouth of the depo-

depositors and witnesses what is saide. As of this, so is it of all other prisoners after þ same sort. By that time that the enquestes for the prisoners be dispatched, it is commonlie dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie for the prisoners, they goe to some other enquests of *nisi prius*, which be ciuill matters and private to draine out the time. The enquestes haue no sooner agreed vpon their charge one way or other, but they tell the Baileye, and pray to be heard, and considering that they be themselues all this while as prisoners as I saide before, it is no maruell, though they make expedition. The prisoners be sent for a gaine to the barre, the enquest which hath agreed, is called for eche one of the Jurie by his name, to which he answereth. Then the clarke asketh if they be agreed, and who shall speake for them. One or moe saith yea. He that speaketh for them all is called the foreman, and commonlie it is he that is first sworne: then the prisoner is bidden to holde vp his hande. The clarke saith unto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked howe thou woldst be tryed, thou saydst by God and thy countrie. These honest men were giuen to thee by God & thy Prince for thy Countrey: Harken what they say. Then he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter or change that matter, if they say guiltie. The clarke asketh what landes, tenements, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswered that they knowe not, nor it shall not greatly neede, for the Sheriff is diligent

diligent enough to enquire of that, for the Princes and his owne aduantage, and so is the excheator also.

Of him whom the riȝt men pronounce guiltie, the Judge asketh what he can say for himselfe: if he can reade, he demandeth his Clergie. For in many felonies, as in theft of oren, shæpe, money, or other such things which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is thers in feare, such is the fauour of our Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie vnder his seale to be Judge in that matter at euerie gaole deliverie. If the condemned man demandeth to be admitted to his booke, the Judge commonly giuest him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime very slenderly:) then he asketh of the Bishops commissarie, *legit ut clericus?* The commissarie must say *legit* or *non legit*, for these be wordes formall, and our men of Lawe be very pretis in their wordes formall. If he say *legit*, the Judge procedeth no further to sentence of death: if he say *non*, the Judge sworthwith, or the next day procedeth to sentence, which is done by word of mouth onelie: Thou A. hast beene endited of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrie, they haue found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. When he saith to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned shortly with in the presence of the Judges in the brayne of his hand with a hot yron marked with the letter T. for a thief, or M. for a mansleer, in cases wheres Cler-

The deliuerie  
to the Bishops  
prison, and  
the purgation  
is taken away  
by Statute.

They must be  
two at the  
least that  
conspired.

gie is admitted, and is delivered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is delivered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty is acquitted soorthly and discharged of prison, paying the gaolers fees: and if he knowe any private man who purchased his inditement, and is able to pursue it, he may haue an action of conspiracie against him, and a large amendes: but that case chaungeth seldom.

### Certaine orders peculiar to England, touching punishment of malefactors.

#### C H A P. 24.

**F**OR any felonie, manslaughter, robbery, murther, rape, and such capitall crimes as touch not treason & *lesam maiestatem*, we haue by the Lawe of England no other punishment, but to hang till they be dead: when they be dead, suerlie man may buris them that will, as commonly they be. Beheading, tormenting, rememburing, either arme or legge, breaking vpon the wheele, empalting, and such cruel tormentes, as be vsed in other nations by the order of their law, we haue not: yet as few murthers committed as any where: nor it is not in the Judges or the Justices power, to aggrauate or mitigate the punishment of the Lawe, but in the Prince onely and his priuate Counsell, which is maruellous seldom done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with cordes till they be dead, bee hanged with chaines whyle they rotte in the ayre. If the wife kill her husbande, she shall bee burned aliu. If the ser-

Servauant kill his master , hee shalbee drawen on a hurdle to the place of execution : it is called petit treason . Impoisoners, if the person die thereof, by a new lawe made in king Henrie the eights time shalbe boyled to death: but this mischiefe is rare and almost unknownen in England. Attempting to impoisen a man, or laying await to kill a man , though he wound him daungerously , yet if death followe not , is no felonie by the lawe of Englannde , for the Prince hath lost no man, and life ought to be givien we say , but for life only . And againe, when a man is murdered, all be principals and shall die, even he that doth but hold the candle to givie light to the murderers. For mitigation and moderation of paines, is but corruption of Judges as we thinks . Likewise, torment or question which is vsed by the order of the ciuill lawe and custome of other countreis to put a malefactor to extreame paine, to make him confesse of him selfe, or of his fellowes or complices, is not vsed in England, it is taken for servile. For what can he serue the common wealth after as a free man, who hath his bodie so haled and tormented, if he be not found guiltye, and what amends can be made him ? And if he must die, what crueltie is it so to torment him before ? Likewise, confession by torment is esteemed for nothing , for if he confesse at the iudgement, the tryall of the iis. goeth not vpon him: If he denie the fact, that whiche he said before hindereth him not . The nature of English men is to neglect death, to abide no torment : And therfore he will confess rather to haue done any thing , yea , to haue killed his own father, than to suffer torment, for death our natiō doth not so much esteeme as a mean torment. In no place hal you see malefactors go more constantly, moze affredly, & with lesse lamentation to their death than in England. Againe, the people not accustomed to see such cruel tormentts , will pitie the person tormented, and abhorre

¶ iis.

abhorre

abhorre the Prince and the Judges, who should bring in such crueltie amongst them, and the xiij. men the rather absoule him. There is an olde lawe of England, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approuer, that is to saie an accuser or *Index* of his complices, the gaoler shall dye therefore as a felon. And to say the trueth, to what purpose is it to use torment? For whether the malefactor confesse or no, and whatsoever he saith, if the enquest of xiij. do find him guiltye, he dyeth therefore without delaye. And the malefactour, seeing there is no remedie, and that they be his countrie men, and such as he hath himselfe agreed vnto it, do finde them worthie death, yeldes for the most part vnto it, and doeth not repine, but doth accomodate himselfe to aske mercie of God. The nature of our nation is frise, stout, hauyts, prodigall of life and bloud: but contumelie, beatings, seruitude and seruile torment & punishment it will not abide. So in this nature and fashion, our auncient Princes and legislators haue nourished them, as to make them stout hearted, couragious and souldiers, not villaines and slaues, and that is the scope almost of all our policie. The xiij. as soone as they haue given their verdict are dismissed to goe whither they will, and haue no manner commoditie & profit of their labour and verdict, but onely do service to the Prince and commonwealth.

### Of Treason, & the trial which is vsed for the higher nobilitie and Barons.

#### CHAP. 25.

The same order touching trial by enquest of xiij. men is taken in Treason, but the paine is more cruell. First to be hanged, taken downe alaine, his bowels taken

ken out and burned before his face , then to be beheaded, and quartered , and those set vp in diverse places. If anie Duke, Marques , or any other of the degréé of a Baron, or aboue, Lord of the Parliament be appeasched of treason, or anie other capitall crime, he is iudged by his peers and equals : that is , the yeomanrie doth not go vpon him, but an enquest of the Lordes of the Parliament, and they gine their voice, not one for all, but eche severally as they do in Parliament , beginning at the yongest lord . And so Judge one lord Or rather  
sitteth, who is Constable of England for that day. The high stewarde  
judgement once giuen, he breaketh his staffe and abs.  
dicateh his office . In the rest there is no difference  
from that aboue written. of Englannde.

## THE THIRDE booke.

Of that which in other countries is called  
*appellation, or prouocation, to amend the iudgement  
or sentence definitiue, which is thought  
vniustly giuen in causes criminall.*

### CHAP. I.



If the enquest of ris men  
do seeme to the Judges &  
the Justices to haue gon  
too violently against the  
evidence giuen in mat-  
ters criminall , either it  
is that vpon slender evi-  
dence they haue pro-  
nounced him giltie , whō  
the Judges & most part  
of

¶ iiiit.

of the Justices thinkes by the evidence not falle p<sup>r</sup>es-  
ued guiltie, or for some other cause, do thanke the per-  
son rather worthie to live than to die. The enquest is  
neuerthelesse dimissed: but when the Judges shoulde  
pronounce the sentence of death vpon the person sound  
guiltie, he will differ it, which is called to reprise the  
prisoner (that is to say to sende him againe to prison)  
and so declare the matter to the Prince, and obtaineth  
after a time for the prisoner his pardon: and as for pro-  
vocation or appeale which is vsed so much in other  
countries, it hath no place in England, after sentence  
givuen by the xii, whereby the person is sounde guiltie  
or not guiltie: but without that reprisning the sen-  
tence is freight put in execution by the Sherife. And if  
they either escape or die an other death, the Sherife es-  
capeth not to pay a great fine and ransom at the Prince's  
mercie: if having p<sup>r</sup>egnant evidence neuerthelesse  
the xii doe acquite the malefactor, which they will doe  
sometime, and especially if they perceiue either one of  
the Justices, or of the Judges, or some other man to  
pursue too much and too malitiously the death of the pri-  
soner, and doe suspect some subordination of the witnesse,  
or them which doe give evidence, and sometime if they  
perceiue the Judge would haue the prisoner escape, and  
in repeating the evidence doe give them thereof some  
watchwoorde. But if they doe as I haue saide, pro-  
nounce not guiltie vpon the prisoner against whom  
manifest witnesse is brought in, the prisoner escapeth:  
but the xii not onely be rebuked by the Judges, but al-  
so threatened of punishment, and many times com-  
maunded to appear in the Starrechamber, or before the  
privie counsell for the matter. But this threatening  
chaunceth afterer than the execution thereof, and the  
xii answere with most gentle wordes, they did it accor-  
ding to their consciences, and pray the Judges to be  
good unto them, they did as they thought right, and as  
they

they accorded all, and so it passeth away for the most part. Yet I haue seene in my time ( but not in the raigne of the Queene nowe ) that an enquest soz pro- nouncing one not guiltie of treason contrarie to such evidence as was brought in, were not onely imprisone- ned soz a space , but an houge fine set vpon their heads, which they were faine to pay: An other enquest soz ac- quiting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were euuen then of many accounted verie violent, tyrannicall, and contrarie to the libertie and custome of the realme of England . Wherefore it commeth verie sel- dome in vse, yet so much at a time the enquest may be corrupted , that the Prince may haue cause with iu- stice to punish them: For they are men , and subiect to corruption and parcialitie, as others be.

### VVhat remedie is, if the sentence be thought vnjustly giuen.

#### CHAP. 2.

If causes civil there is another order : soz if after the matter be pleaded to the issue, and the xij men there, upon impaneled, the evidence brought and pleaded before them on both the parties , the xij seeme to be partiall, and to haue given sentence contrarie to the evidence shewed vnto them : the partie greued may bring against them, and the partie soz whome the sentence is giuen, a writ of attaint : and where as before vpon the first quest commonly they all be yeomen, now vpon this attaint must go xiiij gentlemen dwelling within the shire , and xij at the least of the hundredeth where the londe lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely nowe he, who claimeth the londe, but also all

P.

and

and every of the yeomen, who by their verdict did give it him. There wilst in the attaint no more evidence

No more evidence be brought in, but onely that which was brought in, on the behalf of the plaintiff, and alledged before the first enquest. And if this seconde enquest of xxxiiij gentlemen do adiudge as the first did, the plaintiff shall not onely lose the land, but also pate a fine to the Prince and damages to the partie. If this seconde enquest do finde that the first enquest hath gone parcially, and against the evidence brought in before them, the first enquest is called attainted, and accounted as periured and infamed. The

The statute of 23. Henrie 8. sessions with other punishments, which at this present doth not abc- by a lawe made by parliament in the time of king lish com- Henrie the eight is abolished, and nowe by that lawe or mon lawe, but act of parliament, beside other punishment, eche of the giueth a more profitable for quest attainted payeth vnto the Prince and partie v. the plaintiff.

li. if it be vnder fourtie poundes: and if aboue, then xx.  
 li. Attaints be verie seldom put in vre, partly because the gentlemen will not mette to slander and deface the honest yeomen their neighbours: so that of a long time, they had rather pate a mean fine than to appeare and make the enquest. And in the meane time they will intreat so much as in them lyeth the parties to come to some composition and agreement among them selues, as lightly they do, except either the corruption of the enquest be too evident, or the one partie is too obftinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I haue saide, than go against it. But if the corruption be too much evident, they will not sticks to attaint the first enquest: yet after the gentle- men haue attainted the yeomen, if before the sentence be giuen by the Judge (which ordinarily for a time is deferred) the parties be agreed, or one of them be dead, the attaint ceaseth.]

If at anie time before the sentence be givien or put in execution , there be found soms such error in the writ, in the proces, or forme (as our lawyers be verie precise and curious of their formes) that it may be revocable , it is brought astresh to the disputation by a writ of error, and all that is done reversed . But that is common to all other countries, where the ciuill law is vsed, which they call *de nullitate processu*, and serueth both in Englannde and in other places aswell in causes criminall, as ciuill . Other kinde of appellation to revoke processes , and to make them of short , long , or long,infinite,which is vsed by the ciuill lawe, we haue not in our common lawe of Englannde. By supplicatiōn to the Prince and complaint to the Chauncelloz upon supposall of losse or lacke of evidence, or too much fauour in the countrey , and power of the aduersarie, there is in our countrey as well as theirs both stopping and prolongation of Justice . For what will not busie heades and louers of trouble never being satisfied inuent in any countrey to haue their desire , which is to vex their neighbours , and to liue alwaies in disquiet ? Men euēn permitted of God like fles, and lise, and other vermine to disquiet them , who would imploye themselues vpon better busynesse and more necessarie for the common wealth : these men are hated , and feared of their neighbours , loued and aided of them whiche gaine by proces , and ware fatte by the expence & trouble of other . But as these men ordinarily spende their owne thrist , and make others against their wils to spende theirs: so sometime being thoroughly knownen, they do not onely liue by the losse like euill husbandes, but beside rebuke & shame, by the equitie of the Prince and courtes soneraigne , they come to be extraordina- rily punished, both corporally , & by their purse, whiche thing in my minde is as royall and princely an act, and so beneficiale to the commonwealth , as in so small a

matter a King or a Queene can doe, for the repose and good education of their subiectes.

Of that which in England is called appeal, in other places accusation.

CHAP. 3.

If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be endited, by giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Justices handes, and thereforee not to be apprehended) and thereupon to procure him to be outlawed, or else within a yere and a day I may enter my appeale, that is mine accusation against him. If I begun first to pursue him by information or denunciation to enditement, I am nowe no partie but the Prince, who for his duetie to God and his common wealth and subiects, must see justice executed against all malefactors & offenders against the peace, which is called Gods and his, & doeth in such maner as I haue saide before. If I leaue that and will appeale, which is profer my accusation against him who hath done to me this iurie, the defendant hath this aduaantage to put himselfe to the Jurie, which is to that which before is saide to haue that issue and triall by God and his countrie, whereof the fashion I haue at large declared: or to demaund the triall by battell, wherein both the parties must eyther themselues in person, or else finde other for them, who be called in our Law Champions or Campions, some doeth interprete them ~~adversarii~~, because they be men chosen, fat, lustrie, fit to the seate, or as the Frenche doe terme them adroictz aux armes, which shall fight it out by ~~monachie~~, or as now they doe call it duellum, or the campe, which shall haue all things equall: but according as Mars gineth the victorie,

In appeale  
the battell is  
tryed by the  
parties onely,  
and in writs of  
right by  
champions.

rie, so the Lawe is iudged the one as *peraltus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant; but this is more daungerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendant is onely in daunger of death. Shorlyt it is from day to sunne set, the quarell is ended, or sooner who bath the better fortune. This seemeth very militarie (as in maner all our policie of Englannde) and to haue as small to doe with Lawyers as with Phisitions, quicklie to dispatche, and for the rest to returne, eche man to his busynesse, to serue the common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring things to a moze moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things done necessarily in what policie. At the least a common wealth militarie must aduenture many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies: Howsoever it be, this kinde of triall of long time hath not beeene vsed. So that at this time we may rather seeke the experiance of it out of our histories of time passed, than of any viewe or sight thereof, of them which are nowe aline. Neverthelesse the Lawe remaineth still, and is not abolished, and if it shall chaunce the murtherer or mansleer (the one we call him that lyeth in waite, and as they terme it in Frenche de guet appendaunt killeth the man, the other who by casuall falling out and sondaine debate and choller doeth the same whiche way soever it be done.) if he that bath slaine the man, hath

The battle or  
Iurie is at the  
election of  
the defendant

his pardon of the prince, as occasion or the fauour of the Prince may so present, y he may hane it, yet the partie grieved hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denied him. And if the defendant either by great assise or by battle be conuinced vpon thatappeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the lawe of our Realme to iustice and to the punishment of blood violently shewed.

### Of the Court of Starre Chamber.

#### CHAP. 4.

There is yet in Englande an other court, of the which that I can understand there is not the like in any other Countrie. In the Terme time ( the Terme time as I haue heretofore shewed, I call the time and those daies when the Lawe is exercised in Westmynster hall, which as I haue said is but at certaine times and termes ) every weeke once at the least, which is commonly on Fridaies, and Wednesdaies, and the next day after that the ferme doeth ende, the Lord Chauncelloz, and the Lordes and other of the priuie Counsell, so many as will, and other Lordes and Barrons which be not of the priuie Counsell, and be in the towne, and the Judges of England, specially the two chiese Judges, from ix. of the clocke till it be xi. doe sit in a place which is called the starre chamber, either because it is full of windowes, or because at the first all the rofe thereof was decked with images of staires gilted. There is plaints heard of riotts. Riot is calld in our English terme or speache, where any number is assembled with force to doe any thing: and it had the beginning, because that our being much accustomed

stomed either in foaine wars, in Fraunce, Scotland, or Ireland, or being ouermuch exercised with ci-  
vill warres within the Realme (which is the fault  
that falleth ordinarily amongst bellicous nations) whereby men of warre, Captaines and souldiers be-  
come plentifull: which when they haue no externe ser-  
vice wherewith to occupie their busie heads & handes  
accustomed to fight and quarell, must needs sake qua-  
rels and contentions amongst themselves, and be-  
come so readie to oppresse right among their neigh-  
bours, as they were woon before with praise of man-  
hode, to be in resisting iniurie offered by their ene-  
mies. So that our nation vled hereunto, & vpon that  
more insolent at home, and not easie to be gouerned by  
Lawe and politike order, men of power beginning ma-  
ny fraies, and the stronger by factions and parties of-  
fering too much iuriarie to the weaker, were occasions  
of making god Lawes. First of retinners, that no  
man shoulde haue aboue a number in his Liverie or re-  
tinue: then of the enquiris of rents and riots at euerie  
Sessions, and of the lawe whereby it is prouided that  
if any by force or by riot enter vpon any possessions,  
the Justices of the peace shal assemble themselves & re-  
move the force, & within certain time enquire thereof.  
And further, because such things are not commonlie  
done by meane men, but by such as be of power & force,  
& be not to be dealt withal of euerie man, nor of meane  
Gentlemen: if the riot be found & certified to the Kings  
Counsell, or if otherwise it be complained of, the  
partie is sent for, and he must appeare in this Starre  
chamber, where seeing ( except the presence of the  
Prince onely) as it were the maiestie of the whole  
Realme before him, being never so stoute, he will be  
abashed: and being called to aunswere (as he must  
come of what degré soever he be) he shall be so charged  
with such grauitie, with such reason & remonstrance,

Sent for by  
Sub pana.

and of those chiefe personages of Englande , one after  
an other handeling him on that sort , that what cou-  
rage soever he hath , his heart will fall to the grounde ,  
and so much the more , when if he make not his aun-  
swere the better , as seldom he can in so open violence ,  
he shalbe commaunded to the flate , where he shall be  
kept in prison in such sort as these Judges shall ap-  
point him , lie there till he be wearie aswell of the re-  
straint of his libertie , as of the great expences , which  
he must there sustaine , and for a time be forgotten ,  
Whiles after long suite of his friendes , he will be glad  
to be ordered by reason . Sometime as his deserts be ,  
he payeth a great fine to the Prince , besides great  
costs and damages to the partie , and yet the mat-  
ter wherefore he attempteth this riot and violence is  
remitted to the common lawe . For that is the effect  
of this Court to bridle such stoute noble men , or Gen-  
tlemen which would offer wrong by force to any man-  
ner men , and cannot be content to deamaund or defend  
the right by order of lawe . This court began long  
before , but tooke great augmentation and authozitie  
at that time that Cardinall Wolsey Archebishop of  
Yorke was Chauncelloz of Englande , who of some  
was thought to haue first devised y Court , because that  
he after some intermission by negligence of time , aug-  
mented the authozitie of it , which was at that time  
maruellous necessary to doe , to represse the insolencie  
of the noble men and gentlemen of the North partes  
of Englande , who being farre from the King and the  
seale of justice made almost as it were an ordinarie  
warre among themselves , and made their force their  
Lawe , banding themselves with their tenaunts and  
seruaunts to doe or revenge injurie one against an o-  
ther as they listed . This thing seemed not supporstable  
to the noble prince King Henric the eight : and sending  
for them one after an other to his Court to aunswere  
before

before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and beene well disciplined as well by words as by flogging a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to understand that they had a Prince who would rule his subiects by his lawes and obedience. With that time this court hath beene in more estimation, and is continued to this day in manner as I haue saide before.

## Of the Courts of Wards and Liueries.

### CHAP. 5.

**H**E whom we call a ward in Englande, is called in Latine *pupillus*, and in Greeke *καρπός*. The gardian is called in Latine *tutor*, in Greeke *ιδούς*. A warde or infant is taken so; a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minorem*, the one to *xiiiij.* yere old, the other was accounted from thence to *xxv.* And as *pupillum* had *tutorem*, so *minor* had *curatorem* til he came to the age of *xxv.* These *tutores* or *curatores* were accountable so; the revenues of the pupils minors lands, & great provision and many lawes and orders is made for them in the bookes of the civil Lawe, so; rendering inst & true accounts. So that to be a gardian or *tutor*, was accounted among them to be a charge or trouble, a thing subiect to much encumbrance and small profit, so that diverse meanes were sought so; to excuse men from it. With vs this is cleane contrarie, so; it is reckoned a profit to haue a warde. For the Lord of whom the warde doeth hold the land, so soon as by the death of the father the childe falleth warde unto him, he sealeth upon the body of the ward and his landes, of which (so that he doeth nourish the ward,) he taketh the profitte without accounts,

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counts, and beside that offering to his ward conenible mariage without dispagement before the age of xxx. yeres if it be a man, or xxiiij. if it be a woman. If the ward refuse to take that mariage, he or she must pay the value of the mariage, which is commonly rated according to the profite of his landes. All this while I speake of that which is called in French garde noble, that is of such as holde lands of other, by knight service, for that is an other kinde of service which we call in Frenche gard recutier, we call it gard in socage, that is of such as doe not holde by knight service, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the land of the warde as the uncle by the mothers side, if the land doe descend by the father and of the fathers side, if the lande descend by the mother. This gardian is accountable for the renvenues and profites of the land, as the tutor by the civill Lawe to the warde or pupill so longe as he is of full age.

The man is not out of wardshippe by our lawe till xxx. yere olde, from thence he is reckoned of full age, as well as in the Romane lawes at xxv. The woman at xxiiij. is out of warde, for she may hane an husband able to doe knighthes service say our booke. And because our wifes be in the power (as I shall tell you hereafter) of their husbands, it is no reason, she shoud be in two diuerse gards.

Many men doe esteeme this wardship by knighthes service very unreasonable and vntuit, and contrarie to nature, that a Fréman and Gentleman should be bought and solde like an horse or an ore, and so change gardians as masters and lordes: at whose governement not onely his bodie but his landes and his houses should be, to be wasted and spent without accounts, and then to marie at the will of him, who is his naturall Lord, or his will who hath bought him, to such as he

Gardian in  
cheualry, and  
gardian in  
Socage.

he like not peradventure, or else to pay so great a ransom. This is the occasion they say, why many gentlemen be so evil brought by touching vertue and learning, and but onely in deintinesse and pleasure: and why they be maried very young and before they bee wise, and many times do not greatly loue their wiues. For when the father is dead, who hath the natural care of his childe, not the mother, nor the vncle, nor the next of kinne, who by all reason would haue most naturall care to the bringing vp of the infant and minor, but the Lorde of whom he holdeth his land in knighthood service, be it the King or Queene, Duke, Marquesse, or any other, hath the gouernement of his bodie and mariage, or else who that bought him at the first, second or thirde hande. The Prince as having so many, must needes give or sell his wardes away to other, and so he doeth. Other doe but seeke which way they may make most aduaantage of him, as of an ore or other beast. These all (say they,) haue no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his warde to take any great paines, either in studie, or any other hardenesse, leake he shoulde be sick and die, before he hath maried his daughter, sister or cousin, for whose sake he bought him: and then all his money which he paide for him shoulde be lost. So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stoccks wasted and gone, land let forth and plowed to the baren, and to make amends, shall pay yet one yeres rent for reliese and sue ouster le maind, beside other charges, so that not of manie yeres and peradventure never he shall be able to recover, and come to the estate where his father left it. This as it is thought was first graunted vpon a great extremitie to King Henrie the 3. for a time

Dij.

vpon

But the Lorde  
shalbe puni-  
shed for the  
wast, by losse  
of the ward or  
treble dam-  
ages, if that  
suffice not.

Upon the warre which he had with his Barons, and as  
ward increased, and multiplied to moze and moze  
persons and grievances, and will be the decay of the  
nobilitie and libertie of England. Other againe say,  
the ward hath no wrong. Soz eyther his father pur-  
chased the lande, or it did descend vnto him from his  
auncesters with this charge. And because he holdeth  
by knigthes service, which is in armes and defence,  
seeing that by age he cannot doe that whereto hee is  
bound by his lande, it is reason he aunswere that pro-  
fite to the Lorde, whereby he may haue as able a man  
to doe the service. The first knights in Rome, those  
that were chosen *equites Romani*, had *equum publicum*  
on which they serued, and that was at the charge of  
widowes and wards, as appeareth by Titus Liuius,  
because that those persons could not doe bodilie ser-  
vice to the common wealth. Wherfore this is no newe  
thing, but thought reasonable in that most wise com-  
mon wealth, and to the prudent King Seruius Tullius.  
As for the education of our common wealth, it was at  
the first militaire, and almost in all things the scope  
and deseigne thereof is militaire. Yet was it thought  
most like, that noble men, god knigths, and great  
captaines would bring vp their wards in their owne  
seates and vertues, and then mary them into like rase  
and stocke where they may finde and make friendes,  
who can better looke to the education or better skill of  
the bringing vp of a gentleman, than he who soz his  
higher nobilitie hath such a one to holde of him by  
knigths service, or would doe it better than he that lo-  
keth or may claime such service of his ward, when age  
and yeres will make him able to doe it. That wodich  
is saide that this maner of wardship began in the time  
of King Henrie the 3. cannot seeme true. For in  
Normandie and other places of Fraunce the same  
order is.

And

And that Statute made in King Henrie the thirde  
time touching wards, to him that will wey it wel, may  
seeme rather a qualification of that matter, and an ar-  
gument that the fashion of wardship was long before:  
but of this matter an other time shall be more conve-  
nient to dispute. This may suffice to declare the ma-  
ner of it.

## Of VViues and mariages.

### CHAP. 6.

**T**He wives in Englande be as I saide in *potestate maritorum*, not that the husbande hath *vita ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I haue saide before, but that what soever they haue before mariage, as soone as mariage is solemnised is their husbandes, I meane of money, plate, innelles, cattaile, and generally all moueables. For as soveraine lande and heritage followeth the succession, and is ordered by the lawe as I shall say hereafter: and what soever they gette after mariage, they get to their husbands. They neither can gine nor sell anie thing either of their husbandes, or their owne. There is no moueable thing in the lawe of England *constantia matrimonii*, but as *pecunium serviam filijfamilias*: and yet in moueables at the death of her husbande she can claime nothing, but according as hee shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors if he die testate. Yet in London and other great cities they haue that lawe and custome, that when a man dieth, his goods be diuided into thre partes. One thirde is employed vpon the buriall and the bequesses which the testator maketh in his testament. An other thirde part the wife

D i t                      hath

bath as her right, and the thirde third part is the dewe and right of his childzen, equally to be diuided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted the goods be equally diuided betweene the wife and the children.

By the common lawe of Englande if a man die intestate, the *Dyndarie* (which is the Bishoppe by common intendment) sometime the Archdeacon, Dean, or Prebendarie by pruiledge and prescription, doeth commit the administration of the goods to the widoowe or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth unto, and the *Dyndarie* by common vnderstanding bath such grauitie and discretion as shalbe mete for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirdes or halves. Our foreshafthers newely conuerted to the Christian faith had such confidence in their passours & instructours, and tooke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would seeke no private profit to themselves thereby, that being once soordeined bath still so continued. The abuse which hath followed was in part redressed by certaine actes of parliament made in the time of king Henrie the eight, touching the probate of testamentees committing of administration & mortuaries. But to turne to the matter whiche we nowe haue in hande, the wife is so much in the power of her husband, that not onely her goods by mariage are streight made her husbandes, and she loseth all her administration whiche she had of them: but also where all Englishmen haue name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is givuen to vs at the font, the surname is the name of the gentilitie and  
Locke

Stocke which the sonne doth take of the father alwaies, as the olde Romans did, our daughters so soone as they be maried loose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their family into an other. So that if my wife was called before Philippe Wilford by her owne name and her fathers surname, as soone as she is maried to me she is no more called Philippe Wylford, but Philippe Smith, and so must she write and signe: and as she changeth husbandes, so she chaungeþ surnames, called alwaies by the surname of her last husbande. Yet if a woman once marrie a Lord or a Knight by which occasion she is called my Ladie with the surname of her husbande, if he die and she take a husbande of a meaner estate by whom she shall not be called Ladie (such is the honour we doe give to women) she shall still be called Ladie with the surname of her first husbande and not of the seconde.

She is no Ladie by the law although so called of course.

I thinke among the olde Romans those marriages which were made *per coemissionem in manum* and *per actum* and *hbraim* made the wife *in manu & potestate viri*, wher of also we had in our olde lawe and ceremonies of mariage, a certaine memorie as a bliche and *vestigium*. For the woman at the Church doze was given of the father or some other man next of her kinne into the handes of the husbande, and he layes downe golde and siluer for her vpon the booke, as though he did buy her, the priest beltis was in steede of Lipriepus: our mariages be esteemed perfect by the law of England, when they be solemnised in the Church or Chappell, in the presence of the priest and other witnesses. And this onely maketh both the husbande and the wife capable of all the benefites which our lawe doth giv unto them and their lawefull children. In so much that if I marrie the widowe of one lately dead, which at the time

of

of her husbandes death was with childe, if the childe be borne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in deede, so prettilye wee doe take the letter where it is saide, *pater est quem nuptia demonstrant.* Whose waies and meanes which Iustini-an doth declare to make bastarde to be lawefull chil-dren, muliers or rather melieurs ( for such a terme our lawe beth for them which be lawefull children ) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselfe never could there legitimate a bastarde to enjoy any benefitte of our lawe, the Par-liament hath onely that power.

Although the wife be ( as I haue written before ) *in manu & potestate mariti*, by our lawe yet they be not kept so streit as in new and with a garde as they be in Italy and Spaine, but haue almost as much liber-tie as in Fraunce, and they haue for the most part all the charge of the house and houshoulde ( as it may ap-peare by Aristotle and Plato the wifes of the Greckes had in their time ) which is in deede the naturall occu-pation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all sorren matters which is the naturall part and office of the man, as I haue written before. And al-though our lawe may seeme somewhat rigozous to-wards the wifes, yet for the most part they can handle their husbandes so well and so doulcely and specially when their husbands be sicke : that where the lawe gi-neth them nothing, their husbandes at their death of their god will give them all. And lewe there be that be not made at the death of their husbandes either sole or chiefe executrices of his last will and testament, and haue for the most part the gouernement of the children and their portions : except it be in London, where a peculiare order is taken by the citie much after the fa-

chion of the civill lawe.

All this while I haue spoken onely of moveable goods: if the wife be an enheretrix & bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwardes, the husbande can not sell nor alienate the same, no not with her consent, nor she her selfe during the mariage, except that she be sole examined by a Judge at the common lawe: and if he haue no childe by her and she die, the lande goeth to her next heires at the common lawe: but if in the mariage he haue a childe by her, whiche is heard once to crie, whether the childe live or dye, the husband shall haue the vsufruite of her landes, that is the profitte of them during his life, and that is called the countie of Englande.

Likewise if the husbande haue any lande either by inheritance descended or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one thirde part of his landes. That is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath child by her or no. If he hath any children, the rest descendeth streight to the eldest; if he hath none, to the next heire at the common lawe: and if she mislike the division she, shal aske to be indowyd of the fairest of his landes to the thirde part.

This whiche I haue written touching mariage and the right in moveables and unmoveables which commeth thereby, is to be vnderstoode by the common lawe when no private contract is more particularly made. If there be any private pacts, covenants, and contracts made before the mariage betwixt the husbande and the wife, by themselves, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made. And this is y-

It is auoide-  
ble after the  
husbandes  
death, except  
it be for xx.  
yeares or  
three lives ac-  
cording to the  
statute, or ex-  
cept they  
leuie a fine.

She shalbe en-  
dowed at y dis-  
cretion of the  
sherife, except  
in few cases.

nough of wines and mariage.

## Of Children.

### CHAP. 7.

Our children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *parcere parentum*. That which is theirs they may give or sell, & purchase to themselves either landes and other moueables the father having nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sue heredes* complaints, *de inefficacia testamento* or *praecesterorum liberorum non emancipatorum* haue no effect nor vse in our lawes, nor wes haue no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoption* nor *arrogatio*. The testator disposeth in his last will his moueable goods freely as he thinketh meete and convenient without controlement of wife or children. And our testamentees for goods moueable be not subiect to the ceremonies of the ciuill lawe, but made with all libertie and fridome, and *iure militari*. Of landes as ye haue vnderstode before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes & daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shifft they can to liue: except that the father in life time doe make some earweiance and estates of part of his land to their vse, or els by devise, which word amongst our lawiers doth betoken a testament written, sealed and delineared in the life time of the testator before witness: for without those ceremonies a bequest of landes is not available.

available. But by the common lawe if hee that dieth bath no sonnes but daughters, the lande is equally diuided among them, whiche portion is made by agreement or by lotte. Although as I haue saide ordinarily and by the common lawe, the eldest sonne inheriteth all the lands, yet in some countries all the sonnes haue equall portion, and that is called ganelkinde, and is in many places in Kent. In some places the youngest is sole heire: and in some places after an other fashion. But these being but particular customes of certaine places and out of the rule of the common lawe, doe little appertain to the disputation of the policie of the whole Realme, and may be infinite. The common wealth is iudged by that which is most ordinarily and commonly done through the whole Realme.

## Of Bondage and Bondmen.

CHAP. 8.

After that we haue spoken of all the sortes of free men according to the diversitie of their estates and persons, it resteth to say somewhat of bondmen which were called *serui*, which kinde of people & the dispositiōn of them and about them doth occupie the most part of Iustinians Digestes, and Code. The Romans had two kindes of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawefull acquisition, or else borne of their bonde women and called *verna*: all those kinde of bondmen be called in our lawe *villens* in grosse, as ye would say immediatly bonde to the person and his heires. An other they had as appeareth in Iustinians time, which they called *adscripticii glebe* or *agri censi*. These were not bond to the person, but to the mannor.

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or place , and did followe him who had the manors , & in our lawe are called villaines regardants , for because they be as members , or belonging to the manor or place . Neither of the one sort nor of the other haue we any number in England . And of the first I never knewe any in the realme in my tyme of the seconde safe we there be , that it is not almost worth the speakeing . But our lawe doth acknowledge them in both those sortes . Manumission of all kinde of villaines or bondmen in Englannde is vised and done after diverse sortes , and by other and more light and easie meanes than is prescribed in the civil lawe , and being once manumitted , he is not *libertus manumittens* , bpt sim-  
ply *liber* : howbeit sith our Realme hath received the Christian religion which maketh vs all in Christ bre-  
thren , and in respect of God and Christ *conservos* , men began to haue conscientie to hold in captiuitie and such extreme bondage him whome they must acknowledge to be his brother , and as we vse to terme him Christian , that is who looketh in Christ and by Christ to haue equall portion with them in the Gospel and salvation . Upon this scruple , in continuance of time , and by long succession , the holie fathers , Monkies and Friers in their confession , and specially in their extreme & deadly sicknesses , burdened the consciences of them whont they had vnder their hands : so that temporall men by little and little by reason of that terror in their conscience , were glad to manumit all their villaines : but the said holie fathers , with the Abbots and Prioris , did not in like sort by theirs , for they had also conscience to impouerish and dispoyle the Churches so much as to manumit such as were bond to their Churches , or to the manors which the Church had gotten , and so kept theirs still . The same did the Bishoppes also still at the last and now of late some Bishoppes to make a peice of money manumitted theirs partly for argent , partly for  
slau-

flaunderes, that they seemed more cruell than the temporalltie: after the monasteries comming into temporall mens handes haue biene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their Comedies, nor as in Greeces as appeareth by theirs: but they were suffered to enjoy coppieholde lande to gaine and get as other seruets that nowe and then their Lordes might fleese them and take a piece of money of them, as in France the Lords doe taile them whom they call their subiectes at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England the chaunge of religion to a more gentle, humane and more equall sort (as the christian religion as in respects of the Gentiles) caused this olde kinde of servile seruitude and slauerie to be brought into that moderation, for necessarie first to villaines regardants, and after to seruitude of landes and tenures, and by little and litle finding out more ciuill and gentle meanes and more equall to haue that done which in time of heathenesse seruitude or bondage did, they almost extinguished the whole. For although all persons christians be bethren by baptisme in Iesu Christ, and thereforee may appeare equally free: yet some were and still might be christianed being bond and serue, and whom as the baptisme did find so it did leaue them, for it chaungeth not ciuill lawes nor compaectes amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Whiche seeing men of god conscience hauing that scruple wherof I wrote before, haue by little and litle found meanes to haue and obtaine the profit of seruitude and bondage which gentilitie did vse and is vsed to this day amongst Christians on the one part, and Turkes and Gentils on the

other part, whē warre is betwixt them vpon those whō they take in battaile. Turkes and Gentiles I call them, which vsling not our lawe the one beleeveth in one God, the other in many gods, of whom they make Images. For the lawe of Jewes is well ynowng knownen, & at this day so farre as I can learne, amongst all people Jewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophesses doe tell that they shold not haue after that Christ was promised to them, was of them refused for when they would not acknowledge him obstinately for taking their helpe in soule for the life to come and honour in this woorlē for the time present not taking the god-tidings, newes, and euangēl brought to them for their disobedience by the great grace of God, and by the promise of the Prophets crucified in vs which be Gentils and brought forth this humanitie, gentlenes, honour and godly knowledge which is seene at this present. But to returne to the purpose.

This perswasio I say of Christians not to make noȝ kepe his brother in Christ, servile, bond and underling for ever unto him, as a beast rather than as a man, and the humanitie which the Christian religion doth teache, hath engendered through Realmes not neere to Turkes and Barbarians, a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue service, hath kept a figure or fashion thereof. So that some would not haue bondmen, but ascriptio gleba, and villaines regardant to the ground, to the intent their service might be furnished, and that the countrie being euill, vnwholsome, and other wise barren, should not be desolate. Others afterwardes found out the wayes and meanes, that not the men but the land shold be bound and bring with it such bondage and service to him that occupieth it, as to capite

rie the Lordes dung vnto the fieldes, so plough his ground at certayne daies, sowe, reape, come to his Court, sweare faith vnto him, and in the ende to holde the lande but by copie of the Lords court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or seruile tenure: yet to consider more deeply all lande, even that which is called most frē lande, hath a bondage annexed vnto it, not as naturally the lower ground, must suffer and receive the water and filth which falleth from the higher ground, nor such as Iustinian speaketh of *de servitudibus prae-  
orum rusticorum & urbanorum*, but the lande doeth bring a certaine kind of seruitude to the possessor. For no man holdeth land simply frē in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fee, that is vpon a faith or trust, and some service to be done to an other Lord of a mannor as his superior, and he againe of an higher Lord, till it come to the Prince & him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstode to be holden of the Crowne, and in captie, which is much like to knights service, and draweth vnto it thre seruices, homage, ward and mariage: That is, he shal sweare to be his man, and to be true vnto him of whom he holdeth the lande. His sonne who holdeth the land after the death of his father, shall be maried where it pleafeth the Lord. He that holdeth the lande most frēly of a temporall man (for franke almosē and franke mariage bath an other cause and nature) holdeth by fealtie onely, whiche is, he shal sweare to be true to the Lord, and dos such service as appertaineth for the land which he holdeth of the Lord. So that all frē lande in Englande is holden in fee or feodo, which is alsmuch to say as in fide or fiducia: That is, in trust and confidence, that he shall be true to the

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Lord

Lorde of whom he holdeth it, pay such rents, doe such seruice, and obserue such conditions as was annexed to the first donation. Thus all sauing the Prince be not *viri domini*, but rather *fiduciarij domini*, & possessores:

Littleton did not interpret Littleton doeth put in his booke, who saith that *feodum idem est quod hereditas*, which it doeth betoken in no simply, but rather define or describe the nature therof. This is a more likely interpretation than that which language. This hapneth many times to them who be of great witte and learning, yet not seene in many tongues, or marketh not the deduction of wordes which time doth alter. *Fides* in Latine the Gothes comming into Italie and corrupting the language, was turned first into *fede*, and at this day in Italie they wil say in *fide*, *en fede* or *ala fe*. And some vncunning Lawyers that would make a newe barbarous latine word to betoken lande given *in fidem*, or as the Italian saith *in fede*, or *fe*, made it in *feudum* or *feodium*.

The nature of the worde appeareth more evident in those which we call *to fef*, *feof* or *feoffees*, the one be *fiduciarij possessores*, or *fidei commissarij*, the other is, *dare in fiduciam*, or *fidei commissum*, or more latinely, *fidei committitio*.

The same Littleton was as much deceived in *withernam*, & diverse other olde wordes. This *withernam* he interpreteth *vetitum nauum*, in what language I knowe not: whereas in trueth it is in plaine Dutche and in our olde Baron language, *wyrter nempt*, *alterum accipere*, *iterum rapere*, a worde that betokeneth that which in barbarous Latine is called *represalia*, when one taking of me a distresse, which in Latine is called *pignus*, or any other thing, and carrying it away out of the jurisdiction wherein I dwelle, I take by order of him that hath jurisdiction, an other of him againe or of some other of that jurisdiction, and doe bring it into the jurisdiction wherein I dwelle, that by equal wrong I may come to haue equall right.

The manner of *represalia*, and that we call *withernam*, is not altogether

ther one: But the nature of them both is as I haue described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be frē, and the bodies at full libertie and *maxime ingenui*, yet by annexing a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine seruitude or rather libertinitie: That the tenaunts beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine service as *libertus*, or *clens patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bond, but in the lande and occupation thereof, it is more properly expressed in calling the one tenant, the other Lord of the fee, than either *libertus* or *clens* can doe the one, or *patronus* the other: for these wordes touche rather the persons, and the office and duetie betwéene them, than the possessions. But in our case leauing the possession and lande, all the obligation of seruitude and service is gone.

An other kinde of seruitude or bondage is vsed in Englannde for the necessitie thereof, which is called apprenticeshode. But this is onely by couenant, and for a time, & during the time it is *vera servitu*. for whatsoeuer the apprentice getteth of his owne labour, or of his masters occupation or stocke, he getteth to him whose apprentice he is, he must not lie forth of his masters dores, he must not occupie any stocke of his owne, nor mary without his masters licence, and he must doe all seruile offices about the house, and be obedient to all his masters commaundementes, and shall suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing, his master being bounde onely to this which I haue saide, and to teache him his occupation, and for that be-

serueth, some for viij. or viij. yeres, some ix. or x. yeres, as the masters and the friends of the young man shall thinke meete or can agree: altogether (as Polidore hath noted) *quasi pro emptissimo seruo*: neuerthlesse that neither was the cause of the name apprentice, neither yet doeth the woorde betoken that whiche Polydore supposeth, but it is a Frenche woorde, and betokeneth a learner or scholer. Apprendre in French is to learne, and apprentice is as much to say in Frenche (of which tongue we borrowed this woorde and many more other) as *discipulus* in Latine: likewise he to whom he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agrēd vpon, be put in writing, signed and sealed by the parties, and registred for moze assurance: without being such an apprentice in London, and seruing out such a servitude in the same Citie for the number of yéeres agreed vpon, by order of the Citie amongst them, no man being neuer so much borne in London, and of parentes londoners is admitted to be a Citizen or free man of London: the like is vsed in other great Cities of Englande. Besides apprentices, others be hired for wages, and be called seruaunts or seruing men and women throughout the whole Realme, which be not in such bondage as apprentices, but serus for the time for daily ministrie, as *serui* and *ancille* did in the time of gentilitie, and be for other matters in libertie as full free men and women.

But all seruaunts, labourers and others not maried, must serue by the yere: and if he be in covenant, he may not depart out of his service without his masters licence, and he must give his master warning that he will depart one quarter of a yere before the terme of the yere expireth, or else he shalbe compelled to serue out an other yere. And if any young man vnmaried be without service, he shalbe compelled to get him a master

ffer whom he must serue for that yere, or else he shalbe punished with stockes and whipping as an idle vagabond. And if any man maried or unmaried, not having rent or liuing sufficient to maintaine himselfe, doe liue so idely, he is enquired of, and sometime sent to the gaole, sometime otherwise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of the chiese charges of the Justices of peace in euerie Shire. It is taken for vngentlenesse and dis honour, and a shewe of emmitie, if any gentleman doe take an other gentlemans seruaunt (although his master hath put him away) without some certificate from his master eyther by word or writing, that he hath discharged him of his service. That which is spoken of men seruaunts, the same is also spoken of women seruaunts. So that all youth that hath not sufficient revenues to maintaine it selfe, must needs with vs serue, and that after an order as I haue written. Thus necessitie & want of bondmen hath made men to vse free men as bondmen to all seruile services: but yet moze liberally and fruely, and with a more equalitie and moderation, than in time of gentilitie slaues and bondemen were wont to be vsed, as I haue saide before. This first and latter fashon of tempozall seruitude, and upon paction is vsed in such countryes, as haue left off the old accustomed maner of seruaunts, slaues, bondemen and bondwomen, which was in vse before they had received the Christian faith. Some after one sort, and some either moze or lelle rigorouslie, according as the nature of the people is inclined, or hath devised aamongst themselves for the necessitie of seruice.

Q ii

Of

Of the Court which is Spirituall or Eccllesiasticall, and in the booke of Law, Court Christian, or *Curia Christianitatis*.

CHAP. 9.

The Archebishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in soure maner of causes; Testamenteſ and legationes, Tythes and moſtuaries, mariage and adulterie or fornication, and also of ſuch things as appertaine to orders amongeſ themſelues and matters concerning religion. For as it doeth appeare, our auncelors hauing the common wealth before ordeneſ & ſet in frame, when they did agree to receiue the true and Christian religiōn, that which was eſtablished before, and concerned externe policie (which their Apoſtles, Doctořs and Preachers diſallowe) they helde and kept ſtill with that which they brought in of newe. And thofe things in keeping wherof they made conſcience, they committed to them to be ordered and gouerned as ſuch things, as of which they had no ſkill, as to men in whom foꝝ the holinesſe of their life and god conſcience, they had a great and ſure confidence. So thofe matters be ordered in their Courts, and after the fashion and maner of the lawe civil or rather common by citation, libel, *confessionem litis*, examination of witneſſes priuile, by exceptions, replicationes apart and in writing, allegationes, matters by ſentences giuen in writing, by appellations from one to an other as well a grauamine as a ſententia definitiva, and ſo they haue other names, as Proctor, Advocates, Aſſezors, Ordinaries, and Commissaries, &c. farre from the manner of our order in the common lawe of Englande, and from that fashion whiſh I haue ſhewed you before. Where-

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soze if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executor or administrato<sup>r</sup> (which is he in our lawe, who is in the ciuill lawe heres or bonoru<sup>m</sup> mobilium p<sup>ro</sup>p<sup>ri</sup>e<sup>tor</sup> ab intestato) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituall be so diuided, that who so euer sueth for any thing to Ryme or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande hee falleth into a premunire, that is hee forsetteth all his goods to the Prince, and his body to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessor which receiueth and doth maintaine that usurped pleading doth incur the same daunger. Whether the word premunire doeth betoken that the authoritie & iurisdiction of the realme is prouided for before and defended by that lawe, and therefore it hath that name premunire or premuniri, or because that by that lawe such an attempture hath had warning given before to him of the daunger into which he falleth by such attempt, and then premunire is barbarously written for pramoneare, premoneri, (as some men haue helde opinion) I will not define, the effect is as I haue declared: and the lawe was first made in king Richarde the secondes time, and is the remedie which is vsed when the spirituall iurisdiction will goe about to encroch any thing vpon the temporall courts. Because this court or forme which is called curia christianitatis, is yet taken as appeareth for an externe and forren court, and differreth from the policie and manner of government of the Realme, and is an other court (as appeareth by the act and w<sup>i</sup>xit of premunire) than curia regis aut reginae. Yet at this present this court as well as others hath her force, power, authoritie,

M iii.

rules

Which ought  
to be tried in  
the temporall  
court.

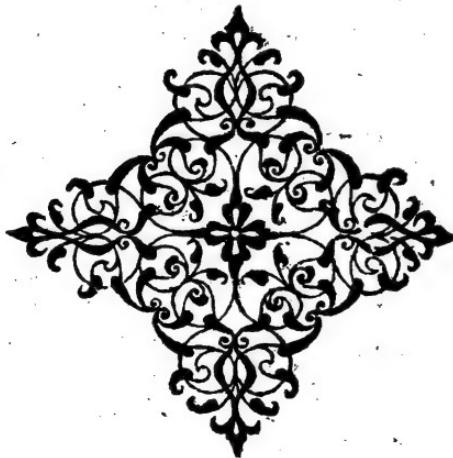
rule and iurisdiction , from the royll maestie and the crowne of England & from no other forren potentate or power vnder God( which being granted, as indeede it is true)it may nowe appeare by some reason that the first Statute of *premissi*e Whereof I haue spoken , hath nowe no place in Englannde , seeing there is no pleading *alibi quam in curia regis ac regina.*

I haue declared sumarilly as it were in a chart or mappe, or as Aristotle termeth it, *accordynge* the forme and manner of the governement of Englannde, and the policie thereof , and sette before your eies the principall pointes wherein it doth differ from the policie of gouernment at this time vsed in Fraunce , Italie, Spaine, Germanie and all other countries, which doe followe the ciuill lawe of the Romanes compiled by Iustinian into his pandects and code: not in that sort as Plato made his common wealth , or Zenophon his kingdom of Persia, nor as Syr Thomas More his *Utopia* being feigned common wealths such as never was nor never shall be, baine imaginations, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englannde standeth and is gouerned at this day the xviii of March Anno 1565. in the viij yeare of the raigne and administration thereof by the most vertuous and noble Quene Elizabeth, daughter to King Henrie the eight, and in the one & fifteth yere of mine age, when I was ambassado<sup>r</sup> for her maestie in the court of Fraunce , the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde , having then raigned iiiij yeares. So that whether I w<sup>r</sup>it true or not , it is easie to be seene with eies ( as a man would say) and felt with handes. Wherfore this being as a project or table of a common wealth truely laide before you, not fained by putting a case : let vs compare it with common wealthes, which be at this day in esse, or doe remaine discribed in true histories,

histories, especially in such pointes wherein the one differeth from the other, to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace. This will be no illiberal occupation for him that is a Philosopher and bath a delight in disputing, nor vnproufitable for him who bath to do & bath god will to serue the Prince and the common wealth in giving counsell for the better administration thereof.

Thomas Smyth.

FINIS.





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Johann - Leyeb. abit fno: 03.

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